

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**





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**Court of Appeals of the District of Columbia**

**APRIL TERM, 1932**

**No. 5787**

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**264**

**STANDARD ACCIDENT INSURANCE COMPANY,  
A CORPORATION, APPELLANT,**

*vs.*

**ROBERT J. HOAGE, DEPUTY COMMISSIONER  
UNITED STATES EMPLOYEES' COMPENSA-  
TION COMMISSION, AND CLARA A. LINDSAY.**

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**APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF  
COLUMBIA.**

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**FILED SEPTEMBER 20, 1932.**

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TION COMMISSION, AND CLARA A. LINDSAY,  
APPELLEES.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF  
COLUMBIA.

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# Court of Appeals of the District of Columbia

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No. 5787.

STANDARD ACCIDENT INSURANCE COMPANY, a Corporation,  
Appellant,

vs.

ROBERT J. HOAGE, Deputy Commissioner, United States  
Employees' Compensation Commission, and Clara A.  
Lindsay.

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*a* Supreme Court of the District of Columbia.

Equity. No. 54345.

STANDARD ACCIDENT INSURANCE COMPANY, a Corporation,  
Plaintiff,

vs.

ROBERT J. HOAGE, Deputy Commissioner, United States  
Employees' Compensation Commission, and Clara A.  
Lindsay, Defendants.

UNITED STATES OF AMERICA,  
*District of Columbia, ss:*

Be it remembered, That in the Supreme Court of the  
District of Columbia, at the City of Washington, in said  
District, at the times hereinafter mentioned, the following  
papers were filed, and proceedings had in the above-en-  
titled cause, to wit:

1 *Bill for Injunction.*

Filed May 13, 1932.

In the Supreme Court of the District of Columbia.

Equity. No. 54345.

STANDARD ACCIDENT INSURANCE COMPANY, a Corporation,  
Plaintiff,

vs.

ROBERT J. HOAGE, Deputy Commissioner, United States  
Employees' Compensation Commission, Clara A. Lind-  
say, Defendants.

To the Honorable the Supreme Court of the District of  
Columbia, holding equity court:

I. The plaintiff, Standard Accident Insurance Company,  
is a corporation duly organized and existing under the  
laws of the State of Michigan, is a citizen of the United  
States and a resident of the City of Detroit, Michigan, and  
is engaged in business and maintains an office in the Dis-  
trict of Columbia, and brings this suit in its o-n right.  
The defendant, Robert J. Hoage, is a citizen of the United  
States and a resident of the State of Maryland, and is sued  
as the Deputy Commissioner, United States Employees'  
Compensation Commission, District of Columbia Com-  
pensation District. The defendant, Clara A. Lindsay, is  
a citizen of the United States and a resident of the District  
of Columbia, and is sued in her own right, and on be-  
2 behalf of Jack Lindsay and Mary Lindsay.

II. The plaintiff, Standard Accident Insurance  
Company, on to-wit the 15th day of December, 1931 was  
the Workmen's Compensation Insurance carrier for Lath-  
ers International Union, Local No. 9 of which one Opie  
F. Lindsay was a member and an officer; that said Opie F.  
Lindsay was the husband of the defendant, Clara A.  
Lindsay; that said Opie F. Lindsay sustained an injury  
on said date resulting in his death, and in due course the  
defendant, Clara A. Lindsay, his widow, made claim for  
compensation pursuant to the provisions of the Act of



Congress approved May 17, 1928, entitled "An Act to provide compensation for disability or death resulting from injury to employees in certain employments in the District of Columbia and for other purposes". Pursuant to said Act a hearing was had before the said defendant, Robert J. Hoage, Deputy Commissioner, at which hearing the plaintiff was represented; that the plaintiff and said Lathers International Union, Local No. 9, at said hearing, in accordance with the practice and procedure before the defendant, Deputy Commissioner, denied that the Lathers International Union, Local No. 9 was an employer within the provisions of said Act, denied that said Opie F. Lindsay was an employee of said Lathers International Union, Local No. 9 within the provisions of said Act and denied that the said Opie F. Lindsay sustained an injury in the course of any employment within the said Act. That testimony was taken and reduced to writing, a true and correct transcript of said testimony being attached hereto marked "Plaintiff's exhibit No. 1", and prayed to

3 be read and considered as a part of this Bill as though incorporated herein.

III. That on to-wit the 9th day of May, 1932, after the hearing aforesaid the defendant, Deputy Commissioner, made an award of compensation to the defendant, Clara A. Lindsay, ordering that the Lathers International Union, Local No. 9 and the Standard Accident Insurance Company shall pay to said claimant compensation in her own behalf and in behalf of Jack Lindsay and Mary Lindsay, surviving children of the deceased, from December 15, 1931 to May 2nd, 1932, a period of twenty (20) weeks, at the rate of \$20.63 per week, amounting to \$412.60, forthwith, shall continue to pay compensation at the rate of \$20.63 per week, payable every two weeks, until further order of the Deputy Commissioner; shall pay to H. B. Nevius, undertaker for burial services rendered in behalf of the deceased the sum of \$200.00; and shall pay to attorney Frank B. Hoffman for legal services rendered in behalf of the claimant the sum of \$200.00, which amount shall constitute a lien upon and be paid out of the unpaid installments of compensation. That said award was based upon certain findings of fact made by the defendant, Deputy Commissioner, said findings of fact being attached to the award; which said findings of fact and the award based thereon are attached hereto marked



“Plaintiff’s Exhibit No. 2” and prayed to be read and considered as a part hereto as though actually incorporated herein.

IV. That plaintiff avers and alleges that said findings of fact as to the status of the Lathers International Union, Local No. 9 as an employer, as to the status of Opie F. Lindsay as an employee, and as to the sustaining of an injury by said Opie F. Lindsay in the course of employment, are not supported by the testimony, that there is no substantial and competent evidence to support the said findings of fact and the claim of the said Clara A. Lindsay; that the said defendant, Deputy Commissioner, was without authority in law to enter an award against the plaintiff because of lack of jurisdiction; that the findings of fact in the compensation award are not in accordance with law, and are not supported by, but are directly contrary to the evidence presented before the said defendant, Robert J. Hoage, Deputy Commissioner, at said hearing; that there is no substantial and competent evidence to show that Lathers International Union, Local No. 9 was carrying on any employment in the District of Columbia, that Opie F. Lindsay was an employee of said Lathers International Union, Local No. 9 and that he sustained an injury in the course of any employment by the Lathers International Union, Local No. 9. That it appears from said testimony that the Lathers International Union, Local No. 9 was and is an unincorporated voluntary association organized for the mutual welfare and protection of its members, and that it was not engaged in any business, trade, occupation or profession in the District of Columbia, the funds of the association being solely derived from the dues of its members and its disbursements being limited to the running expenses of the Union. The testimony further shows that the decedent Lindsay was a member of the Union, duly elected to the office of Business Agent for the term of one year, performing the duties of his office as laid down in the Constitution and By-laws, these duties relating to the mutual benefit purposes of the Union and involving no work or labor in any business or trade carried on by the Union. The testimony further shows that at the time of the injury resulting in his death the said Lindsay was not engaged in any work or labor in any trade or business of the Union of which he was a member, but was



carrying out the duties of his office in the mutual improvement and benefit purposes of the Union.

V. That the said award calls for the payment of a lump sum of money and weekly compensation payments thereafter which, if the plaintiff and the said Lathers International Union, Local No. 9 are compelled to pay, cannot be recovered from the said defendant, Clara A. Lindsay, who is not financially responsible or able to repay such amounts in the event it should be determined that said award is invalid. That by reason of said facts an irreparable injury will result to the said Union and the said plaintiff unless said award be enjoined.

Wherefore, the premises considered, the plaintiff prays:

1. That a writ of subpoena be issued by this Court to the said defendant, Robert J. Hoage, Deputy Commissioner, and said defendant, Clara A. Lindsay, requiring them to appear and answer the exigencies of this Bill by a day certain to be named therein.

2. That the aforesaid defendants and each of them be preliminarily enjoined and after hearing enjoined  
6 pendente lite from enforcing or attempting to enforce the aforesaid award.

3. That upon final hearing a mandatory injunction may issue from this Honorable Court requiring the defendant, Robert J. Hoage, Deputy Commissioner, to vacate and set aside his award of May 9th, 1932 granting compensation to said Clara A. Lindsay, and to issue an order rejecting the claim of said Clara A. Lindsay for compensation.

4. For such other and further relief as the nature of the case may require and to the Court seem just and proper.

STANDARD ACCIDENT INSURANCE COMPANY,

By EDW. S. BRASHEARS.

BRASHEARS & TOWNSEND,

By EDW. S. BRASHEARS,  
WILSON L. TOWNSEND,  
ALBERT F. BEASLEY,  
*Attorneys for Plaintiff.*

DISTRICT OF COLUMBIA, ss:

Edward S. Brashears, being first duly sworn on oath, deposes and states, that he is the attorney for the Standard



Accident Insurance Company, a corporation of Detroit, Michigan, absent from the District of Columbia; that he has read the foregoing Bill of Complaint subscribed by him as attorney and verily believes the facts stated in said Bill of Complaint to be true.

EDW. S. BRASHEARS.

Subscribed and sworn to before me this 13<sup>th</sup> day of May, 1932.

[NOTARIAL SEAL.]

HELEN A. LOSANO,  
*Notary Public.*

7

*Stipulation.*

Filed Sep. 10, 1932.

\* \* \* \* \*

It is hereby stipulated and agreed by and between the attorneys for the complainant and the respondents in the above entitled case that the transcript of testimony taken before the Deputy Commissioner, attached as Exhibit No. 1 to the original Bill of Complaint, shall be detached and incorporated in the record on appeal, and be transmitted to the Court of Appeals by the Clerk of the Supreme Court of the District of Columbia as part of said record.

September 9, 1932.

BRASHEARS & TOWNSEND,  
By WILSON L. TOWNSEND,  
*Attorneys for Complainant.*

JOHN J. WILSON,  
*Asst. U. S. Atty., D. C.,*  
*Attorney for Respondent R. J. Hoage.*

FRANK B. HOFFMAN,  
*Attorney for Respondent Clara A. Lindsay.*

8

PLAINTIFF'S EXHIBIT No. 1.

*Transcript of Testimony at Hearing.*

Filed May 13, 1932.

United States Employees' Compensation Commission for  
the District of Columbia.

Before Hon. R. J. Hoage, Deputy Commissioner for the  
District of Columbia.

No. 1915-4.

Mrs. CLARA A. LINDSAY, Claimant,

vs.

LATHERS INTERNATIONAL UNION, LOCAL No. 9, Employer;  
Standard Accident Insurance Company, Insurance Car-  
rier.

Pursuant to notice, this matter was heard before Honor-  
able R. J. Hoage, Deputy Commissioner, United States  
Employees' Compensation Commission, at Washington,  
D. C., on April 13, 1932, at 10 o'clock a. m.

Appearances:

Frank B. Hoffman, Esq., on behalf of the Claimant.

Wilson L. Townsend, Esq., and E. F. Herbert, Esq., on  
behalf of the Respondent.

9       The Deputy Commissioner: This is the case of  
Mrs. Clara A. Lindsay, the Claimant, against the  
Lathers' International Union, Local No. 9, Employer, and  
the Standard Accident Insurance Company, Insurance Car-  
rier, having been formally set for hearing, is presented for  
consideration at this time.

Parties present: Mrs. Clara A. Lindsay, the Claimant,  
in person, represented by Attorney Frank B. Hoffman.

Witnesses on behalf of the Claimant: W. E. Stearn, J.  
R. Golding, Arthur D. Mulloy, Frank T. Dean and records,  
Timothy A. Hill and records, and John Locher and records.

Mr. Dean: I called Mr. Locher a few minutes ago and he  
said he would be here.



The Deputy Commissioner: Have you any other witnesses, Mr. Hoffman?

Mr. Hoffman: That is all.

The Deputy Commissioner: Representing the Respondent: Wilson L. Townsend, and E. F. Herbert.

Witnesses on behalf of the Respondent, Frank Dean, already reported, Timothy Hill as reported, and Mr. Harry Lee.

Any other witnesses, Mr. Herbert.

Mr. Herbert: That is all.

The Deputy Commissioner: Shall I address you, Mr. Herbert, or shall I address Mr. Townsend?

Mr. Herbert: You will please address Mr. Townsend?

10 Mr. Herbert: You will please address Mr. Townsend, Mr. Hoage.

The Deputy Commissioner: Claim was filed by the Claimant, Mrs. Clara A. Lindsay, in the office of the Deputy Commissioner on January 28, 1932, in which she alleges to have been the surviving wife of Opie F. Lindsay, making claim in her own behalf as the surviving wife; and in behalf of Jack Lindsay, born August 8, 1923, and Mary Lindsay, born December 24, 1929, alleged to be the surviving children, for injuries alleged to have been sustained and resulting in the death of the deceased on December 15, 1931, at 6:30 p. m., while returning from investigating a job at Fredericksburg, his car was struck by a truck, killing one other man and injuring three others, and, as the result of the collision, said Opie F. Lindsay suffered injuries resulting in his death on the same day.

Mr. Townsend, will you admit that the Lathers' International Union, Local No. 9, on December 15, was an employer within the meaning of the District of Columbia Workmen's Compensation Act?

Mr. Townsend: We have a number of objections and matters to take up, and I suggest that the witnesses be sworn and excluded.

The Deputy Commissioner: Very well.

Mr. Townsend: Then we can take them up serially.

11 The Deputy Commissioner: Will all the witnesses, whose names I will call, please stand and remain standing until you take the oath: Mrs. Clara A. Lindsay, W. E. Stearn, J. R. Golding, Arthur D. Mulloy, Frank T. Dean, Timothy A. Hill, and Harry Lee.



(Thereupon, the Claimant, Mrs. Clara A. Lindsay, W. E. Stearn, J. R. Golding, Arthur D. Mulloy, Frank T. Dean, and Timothy A. Hill, were duly sworn by the Deputy Commissioner.)

The Deputy Commissioner: The Claimant may remain. Who represents the employer in this case?

Mr. Dean: Mr. Hill is the Secretary and I am the business representative.

The Deputy Commissioner: Are you both to testify from the records?

Mr. Dean: Yes, sir.

The Deputy Commissioner: Is there any objection to having these two men remain?

Mr. Herbert: I suppose the Secretary will remain here; he is the local officer.

Mr. Dean: As I understand it, the business representative takes care of the majority of the business, so I think I should remain.

The Deputy Commissioner: You are Mr. Dean, aren't you?

Mr. Dean: Yes, sir.

The Deputy Commissioner: Then, Mr. Dean may remain on behalf of the Respondent.

12        Let all the witnesses step out into the hall. Remember you are under oath, so please do not discuss this case among yourselves or with anybody else during the course of this hearing.

(The witnesses thereupon were excluded from the hearing room.)

The Deputy Commissioner: Now, I will ask you again: do you admit that the Lathers International Union, Local No. 9, was subject to the provisions of this Act at the time of the alleged injury?

Mr. Townsend: We don't admit that; we deny that.

The Deputy Commissioner: Did you carry an insurance policy on the Lathers' International Union at that time?

Mr. Townsend: Yes; but, there are some other matters I want to bring up.

The Deputy Commissioner: If you don't admit that, I will have to bring proof in to establish it; that is all.

Mr. Townsend: All right.



The Deputy Commissioner: Will you admit that Opie F. Lindsay sustained an injury on the 15th day of December, resulting in his death?

Mr. Townsend: Yes, sir.

The Deputy Commissioner: Is there any question about the wages he was receiving? I see the report shows he was receiving \$16.00 a day or \$80.00 a week.

13 Mr. Dean: I have the checks here for the entire year.

The Deputy Commissioner: All right, then. Have you a copy of the pay roll that you submitted to the Insurance Company upon which you paid premiums?

Mr. Dean: No, I have not. I don't believe there was ever a record of that made.

The Deputy Commissioner: Have you got a copy of the policy that was issued?

Mr. Townsend: We admit a policy was issued.

The Deputy Commissioner: You are denying that they were subject to the provisions of this Act, but you admit there was a policy written?

Mr. Townsend: Yes.

The Deputy Commissioner: The records of the Deputy Commissioner, provided under the regulations of the United States Employees' Compensation Commission, which require the Insurance Company issuing a policy on a risk, to notify, on a form prescribed by the Commission, the office of the Deputy Commissioner the date of insurance coverage of the policy be filed in the office of the Deputy Commissioner on July 1, 1931, a copy of which is herewith presented to become a part of the record in this case. You have admitted that, and this shows that the coverage of insurance written by the Standard Accident Insurance Company by Policy AZ286574, covering Wood, Wire and Metal Lathers' Local Union, No. 9, for the period from  
14 July 1, 1931, to July 1, 1932.

Do you admit, Mr. Townsend, that the employer had notice within thirty days from the date of the injury—had knowledge of the injury?

Mr. Townsend: Yes. We deny that this is an employer, but we admit notice of the Wood, Lathers' Union.

The Deputy Commissioner: Yes. I just wanted to cover that.



Will you admit that the Claimant in this case is the surviving wife of the deceased employee?

Mr. Townsend: Yes, we admit that.

The Deputy Commissioner: We have here a certified copy of the marriage certificate.

Mr. Townsend: That is admitted.

The Deputy Commissioner: Do you admit that the children, whose names are mentioned in the claim, are the surviving children of the deceased?

Mr. Townsend: Yes.

The Deputy Commissioner: Will you admit that the burial expenses, furnished by H. B. Nevius, undertaker in Washington, D. C., was in excess of \$200?

Mr. Townsend: Yes.

The Deputy Commissioner: Now, Mr. Townsend, what is your denial? Will you make it as brief as you can?

Mr. Townsend: Yes. In the first place, we deny  
15 that the Union, without reciting its full name, is within the provisions of the District of Columbia Employees' Compensation Act as an employer; that it is doing business in the District of Columbia as an employer of labor?

The Deputy Commissioner: I see; that it is an employer within the meaning of this Act?

Mr. Townsend: Yes. We deny that the deceased was an employee within the meaning of this Act, and that carries with it the denial that the injuries sustained by him were in the course of any employment within the Act, admitting, as we already have, that the accident occurred.

The Deputy Commissioner: Yes.

Then, the questions to be proved are, first, is the Union an employer within the meaning of the Act; that the employee was an employee of the employer within the meaning of the Act; and that the injury arose out of and in the course of the employment?

Mr. Townsend: Yes.

The Deputy Commissioner: Now, you are not bound by any common or statutory rules of evidence, gentlemen; and those are the only questions you are to prove at this time.

Mr. Hoffman, you may proceed with your witnesses to establish your proof on that basis.

Mr. Hoffman: I will call Mr. Dean.



16        Thereupon **Frank T. Dean**, called as a witness for and on behalf of the Claimant, having been previously duly sworn by the Deputy Commissioner, as above indicated, assumed the witness stand, and, upon examination, testified as follows:

The Deputy Commissioner: Before we start, is there any objection to admitting the claim as a part of the record, gentlemen? If not, I will ask that it be marked Deputy Commissioner's Exhibit No. 1.

(The document in question was thereupon marked by the Reporter "Deputy Commissioner Exhibit No. 1," and, as such, was received in evidence and is filed in the office of the Deputy Commissioner in this case.)

Mr. Townsend: It seems to me, Mr. Hoage, while we have limited the issue, still I think there should be in the record, sufficient evidence to identify the accident rather than have this hearing solely on matters which apparently may come down to matters of law.

The Deputy Commissioner: I don't have a copy of the proof of death. Would you like to have that?

Mr. Townsend: No. I was referring to the facts of the accident particularly which caused his death. I presume Mr. Hoffman intends to prove that.

The Deputy Commissioner: I think I read into the record two records of the Deputy Commissioner  
17        with reference to the injury.

Mr. Townsend: I was thinking of the place of the accident, and so forth.

The Deputy Commissioner: I would like to have that go into the record, showing what you might have with reference to the premiums which have been made from the pay roll or any adjustments that have been made on the premiums.

Mr. Townsend: Very well.

The Deputy Commissioner: All right, you may proceed, Mr. Hoffman.

Direct examination.

By Mr. Hoffman:

Q. Mr. Dean, what is your official position? A. Business representative or business agent.



Q. Will you relate just what those duties consist of; in other words, the scope of your duties as such? A. The business agent represents the Union to take care of what work may be necessary to keep the men in the Union employed, and is subject at all times to calls at any hours of the night and day to take care of various matters that have to be taken care of; and you are called on committees to adjust wage scales or anything pertaining to the organization in reference to the work, and to carry out the different instructions that are given to me by the organization. And

also, as a representative of the Building Trades  
18 Council, I am on call from the Building Trades Council at times and they dictate as to the different moves and policies that a business agent should carry out. As a whole, I would say, just to take care of the business matters pertaining to the organization at all times.

Q. Mr. Dean, did you have authority to give orders to members of the local union? A. Yes.

Q. Are you acquainted with or were you acquainted with Opie F. Lindsay? A. Yes.

Q. Can you state what his position was prior to his death? A. Identically the same as mine.

Q. Can you state how long, of your own knowledge, Mr. Lindsay was employed in that position in Local Union No. 9? A. This was his third time as business agent. He had been defeated at previous elections, but I believe in all that he has served somewhere in the neighborhood of three years.

Q. Directing your attention to December 15, 1931, can you state whether or not Mr. Lindsay had occasion to leave Washington? A. Yes, I can.

Q. If so, where did he go and for what purpose?  
19 A. I was Secretary of the Council at the time.

The Deputy Commissioner: What Council was that?

The Witness: The Council or the Executive Board of our organization; and the Executive Board at any time may bring in a recommendation to the local.

The Deputy Commissioner: Is that an incorporated body?

The Witness: Yes.

The Deputy Commissioner: Were you duly elected in accordance with the by-laws and regulations of that Society?



The Witness: Yes.

The Deputy Commissioner: Were your duties described in that organization?

The Witness: Yes.

Mr. Townsend: Might I interrupt?

The Deputy Commissioner: Yes.

Mr. Townsend: He speaks of a Council. Is he speaking of the Wood Lathers' Union or the Board Council?

The Witness: Not the Lathers' Union; the Executive Board, Local No. 9.

Mr. Herbert: That is a committee within the Union?

The Witness: Yes. They are an elected body.

The Deputy Commissioner: Elected by the Board?

The Witness: Yes, sir.

The Deputy Commissioner: Is that provided for by the by-laws and constitution of the organization.

The Witness: Yes, sir.

The Deputy Commissioner: That is on file and becomes a part of the corporate record?

The Witness: Yes.

By Mr. Hoffman:

Q. Do you have a copy of the by-laws with you, Mr. Dean? A. Yes.

Mr. Hoffman: I would like to offer a copy of the by-laws into the record.

The Deputy Commissioner: It will be attached to the record, and made a part of the record. It does not need to be copied.

(Here follows copy of Constitution and By-Laws, Wood, Wire and Metal Lathers' International Union, Local No. 9, marked page 20.)

21 By Mr. Hoffman:

Q. Mr. Dean, do you have the records of your Local Union No. 9? A. Yes, both the Executive Board and the Local.

Q. Is there anything of record in the minutes of the Executive Board showing the election of Mr. Lindsay to the office which he held at the time of his decease? A. Yes.



# **Constitution and By-Laws**



**Wood, Wire and Metal  
Lathers' International  
Union, Local No. 9**

**WASHINGTON, D. C.**

**Approved August 23, 1929,  
By General President  
John H. Bell**





## **PREAMBLE**

We, the Lathers of Washington, D. C., and vicinity, known as the Wood, Wire and Metal Lathers International Union Local No. 9, have for the purpose herein proposed, agreed to associate ourselves into a perpetual Union for our mutual protection and welfare. The design of this Union is to promote harmony and co-operation among its members and maintain a remunerative price for our labor.

## ORDER OF BUSINESS

1. Roll Call of Officers.
2. Reading of Minutes.
3. Communications and Bills.
4. Applications for Membership.
5. Report of Standing Committees.
6. Report of Delegates.
7. Report of Shop Stewards.
8. Report of Executive Board.
9. Unfinished Business.
10. Roll call of Members.
11. New Business.
12. Good and Welfare.
13. Receipts and Expenditures.
14. Adjournment.

## CONSTITUTION

### Name.

This Union shall be known as Local No. 9 of the Wood, Wire and Metal Lathers' International Union of Washington, D. C., and vicinity, and shall be a journeyman Local strictly.

### Object.

The object of this Union shall be the elevation of the position of its members and to obtain by conciliation, or by other means just and legal, a fair remuneration to members for their labor, and to afford mutual protection against obnoxious rules, unlawful discharge, or other systems of injustice and oppression.

Section 1. The officers of this Union shall be a President, Vice President, Recording Secretary, Financial Secretary-Treasurer, Business Agent, Sergeant-at-Arms, Executive Board and Finance Committee.

Sec. 2. The officers of this Union shall be elected semi-annually on the last meeting in June and December, except the Financial Secretary-Treasurer, who shall be elected and bonded for one (1) year, nominations one (1) week previous to election.



Sec. 3. The officers of this Union to receive such salaries as the Union may from time to time adopt.

Sec. 4. Any officer failing to discharge his duties for three (3) consecutive meetings without otherwise being excused by the Local, his office shall be declared vacant and nomination to be held the same night to fill the vacancy.

Sec. 5. Any salaried officer failing to discharge his duties satisfactorily shall not be compensated for same.

#### Obligation

Sec. 6. I do hereby pledge my word of honor as a man on becoming a member of the Wood, Wire and Metal Lathers to do all in my power to promote the interest of said body and to defend the Constitution and By-Laws of the same; to violate the obligation shall stamp me as a man destitute of honor and worthy only of scorn of Union men.

#### PLEDGE OF OFFICERS

Sec. 7. The following pledge will be required of each officer before entering upon his duties: "I, \_\_\_\_\_, promise to fulfill to the best of my knowledge and ability the duty of the office to which I have been elected until my successor shall be elected and installed."

## OFFICERS' DUTIES

### President

Sec. 8. It shall be the duty of the President to preside at all meetings; decide all points of order; preserve order; appoint all committees not otherwise herein provided for and have the deciding vote in case of a tie. He shall cause the books of the Financial Secretary-Treasurer to be audited at least semi-annually, reporting the results of such audit to the local.

### Vice President

Sec. 9. It shall be the duty of the Vice President to assist the President and in his absence preside over the meetings and perform such other duties as laid down for him in the Constitution and By-Laws or otherwise be directed by the Union.

### Recording Secretary

Sec. 10. In the absence of both the President and Vice President, he shall call the meeting to order and appoint one (1) of the members to act as President pro tem. He shall keep a full record and correct account of the transactions of the meetings together with the amount of receipts and expenditures of each meeting; keep a record of all letters received and answered and record the name of the mover of a motion. At the expiration of his term he shall turn over to his successor all papers, books, etc., pertaining to his office.

### Financial Secretary-Treasurer

Sec. 11. He shall receive all moneys paid into the Union; he shall keep an itemized account of same, a correct account of each member, name and address, and notify them when three (3) months in arrears; he shall read the names of members in arrears for three (3) months at the first meeting of each quarter and furnish the Executive Board with a list of all delinquents; he shall have charge of all communications, he shall keep a cash book and announce receipts and expenses of the evening. He shall at the expiration of his term turn over to his successor all papers, books, etc., pertaining to his office. He shall pay half dues.

### Sergeant-at-Arms

Sec. 12. He shall have charge of the Hall and open same at least one-half ( $\frac{1}{2}$ ) hour before the meeting is called. He shall assist the President in preserving order at the meetings and shall be empowered to call upon any member to assist him to preserve order. He shall see that none other than members are admitted to the Hall.

### Business Agent

Sec. 13. It shall be the duty of the Business Agent to visit each and every job, call on the Shop Steward and ascertain the exact number of members working in each shop, to examine the Cards or permits of all members,



and to have full authority to call out any member committing an infraction of the Constitution and By-Laws, and to attend to all other business the Union may direct; he shall at all times when on duty and attending to business of the Union, abstain from all intoxicating liquors; he shall be elected for a term of twelve (12) months and to act only when called upon or when necessary; upon charges being preferred against him for failing to perform his duties, he shall forfeit his day's pay for each offense and the office declared vacant and an election held the same night to fill vacancy. He shall be a member, ex-officio of all committees.

### **Executive Board**

Sec. 14. The members of the Executive Board shall attend all meetings where their services are required, and no plea shall act as an excuse except sickness or a reasonable written excuse. Their duties shall be to try all cases referred to them by the President or the Union; decide all applications for working permits and such other duties as the Union may require.

### **Committees**

Sec. 15. Any member of this Union appointed to serve as a Delegate to the Building Trades Council or Central Labor Union and fails to do so for three (3) consecutive meetings shall be fined the sum of one dollar (\$1).

### **Shop Steward**

Sec. 16. Each body of men shall elect a Shop Steward for each job they are working on not later than noon of the first day, who shall inspect all books and cards and collect for all arrears, dues, fines and assessments, and on leaving before completion shall appoint a member in good standing to act in his stead; he shall report at each meeting the condition of the job, the number of members working, and see that the Constitution and By-Laws of the Union are strictly enforced. Members failing to comply with this section shall upon conviction be fined such a sum as may be decided by the Union.

### **Donations**

No donations from the treasury to exceed ten (\$10.00) dollars shall be made to any member. No donation from the treasury shall be made to any other organization to exceed ten (\$10.00) dollars, except upon recommendation of the Executive Board.

### **Trade Jurisdiction**

Sec. 17. It shall have jurisdiction over the following work: Erecting and installing of all light iron construction, furring, making and erecting of brackets, clips and hangers; wood, wire and metal lath, plaster board, or other material which takes the place of same, to which plastic material is adhered; corner beads, all floor construction, arches erected for the pur-

pose of holding plaster, cement, concrete, or any other plastic material.

Sec. 18. The foregoing classification of work, as defined in numerous decisions and rulings since this jurisdiction was granted our organization, covers such work as:

Sec. 19. Light iron partitions, constructed of channels, flat iron, Knapp, Berger and other patent pronged studs, iron wall furring, all light iron work for suspended and other metallic lath ceilings, making and erecting light iron brackets, which are used in connection with ornamental plastering for cornices, panelled ceilings, groin, elliptical, Gothic proscenium and all other arches of this description; the erection of metal corner beads, metal picture mould, metal base screed, and other metal specialties which are covered with plastic material, the wrapping of beams and columns, the placing of steel-tile and other forms of floor reinforcement, the placing, nailing and tying of all wire and metallic lath, no matter for what purpose used—which includes wire cloth, expanded metal, all Hy-Rib, Self-Sentering, Shure-Bond, Trussit, Ferro-Inclave, Ferro-Lithic, Plate Lath, Chanelath, Rib-Centering, Kno-Fur, Corr-Mesh, Truss-V-Rib, Truss-Metal, Key-Ridge, and all other similar forms of self-supporting lath; the fabrication and installation of all light iron erected for the purpose of receiving metallic lath, or

plastic material, and all other forms and makes of lath, including Wood, Plaster Board, Besta-Board, Button-lath, Woven-Wood Lath, Metalite-lath, Mastic-Board, Bishopric-Board, E-Cod-Fabric, Welded-Sheathed-Lath, Composite or Brick Lath, Basket-lath, and lath of any other make or description, erected to receive or hold plastic material.



## **BY-LAWS**

### **Membership**

Sec. 20. All persons wishing to become members of this Union shall be practical Lathers who have worked at least two years at the trade and shall conform to the rules and regulations which this union may from time to time adopt.

Sec. 21. Any Lather wishing to become a member of this Union must have two (2) members in good standing to vouch for him.

Sec. 22. Any member vouching for an applicant, knowing he is not a mechanic, shall be subject to a fine of not less than five dollars (\$5).

Sec. 23. All applicants must appear before the Executive Board; said findings of the Board shall be final unless reversed by a two-thirds vote of all members in good standing.

### **Voting Rights**

Sec. 24. No member shall be entitled to a vote on the call of strikes, increase in wages, decrease in hours, election of officers, or the disbursement of funds until he has been in good standing in this Local for three (3) months.

Sec. 25. No member shall hold more than one office at one and the same time, with the exception of the Financial Secretary and Treasurer, who shall only hold the office for which he is bonded. The Financial Secretary and Treasurer shall have a limited telephone installed in his home, the same to be paid for by the Local.

Sec. 26. No member shall be eligible to any elective office of this Union until he has been in good standing for three (3) months, unless otherwise decided by the Union.

### **Dues**

Sec. 27. The dues of this Union shall be eight (8) dollars per month, to be paid on or before the fifteenth (15th) day of each month.

Sec. 28. Any member being unable by some unavoidable reason to pay dues, fines or assessments shall report his case to the Shop Steward, who, in turn, shall at the next meeting report the Brother's reasons for not paying same; in the meantime an extension of time shall be granted by the Shop Steward until the next meeting night, said member shall be given a permit, and all arrears are to be paid at the rate of two dollars (\$2) per day.

Sec. 29. Any member failing to comply with the orders of the Shop Steward shall appear before the Executive Board and upon conviction shall be fined not less than five dollars (\$5).

Sec. 30. No permit shall be issued unless signed by the Business Agent or Chairman of the Executive Board.

### Wage Scale

Sec. 31. The wages of this Union shall be one dollar and fifty cents (\$1.50) per hour, or twelve dollars (\$12) per day.

Sec. 32. The initiation fee of this Union shall be one hundred dollars (\$100), to be paid twenty dollars (\$20) down and as provided for in Section 28.

Sec. 33. Any member suspended from this Union shall pay a "reinstatement fee" equal to one-half the initiation fee for reinstating, where the applicant has been in arrears for a period of six months or more. This "reinstatement fee" can not be indicated on a transfer and can only be collected after all other claims have been paid in full.

### Revenue

Sec. 34. All revenue collected shall be placed in a general fund to be used for the express purpose of the running expenses of the Union only. Under no circumstances can money or moneys be used except as stated in this article.

Sec. 35. In case the Union Treasury shall become insolvent and can not meet expenses, the members shall be subject to an assessment, to be levied in accord with international law on this subject.

Sec. 36. Any member collecting dues, fines, or assessments and failing to report same at the first meeting, shall subject himself to a fine of not less than five dollars (\$5) or more than ten dollars (\$10).

### Attendance

Any member absenting himself for two consecutive meetings shall be fined fifty (50) cents; for four consecutive meetings, one dollar (\$1.00).

### Charges

Sec. 37. All charges for violating the rules of this Union shall be in writing. The Executive Board shall act on all charges, and the accused must be notified.

Sec. 38. Should the accused fail to appear at the appointed time, the Board shall act on what evidence they may have and their findings shall be final.

Sec. 39. Any member of this Union tried and found guilty of charges placed against him shall be fined accordingly, such fines to be collected by the Shop Steward at the rate of \$2.00 per day for each day worked.

### Change of Address

A member changing his address shall immediately notify the Secretary of such change. In all cases notice sent by mail to address in membership book will be sufficient notice.



## Quorums

No business shall be transacted unless there be present eight (8) members in good standing.

## Amendments

It shall require a two-thirds vote of all members in good standing in this Union to amend any part of these By-Laws after three readings.

## Strikes

A motion for a general strike shall be adopted by a two-thirds vote of all members in good standing.

A member shall stop work when ordered to do so by the Business Agent. Any member or members of this Union refusing to stop work when ordered to do so by the Business Agent shall be ordered to appear before the Executive Board at its next regular meeting, and, failing to do so, shall be suspended from this Union.

## Apprentices

Sec. 40. All applicants for apprenticeship must be over the age of sixteen (16) years and not over twenty-one (21) years.

Sec. 41. The sons of Lathers shall have the preference in the appointment of apprentices.

Sec. 42. All apprentices shall serve a term of three (3) years.

Sec. 43. All apprentices are required to attend some school of architecture or institution of that nature for a period of not less than three (3) years while serving their apprenticeship.

Sec. 44. All apprentices shall be under the jurisdiction of this Union.

Sec. 45. All apprentices shall appear before this Union once in each month, and they shall be assessed one dollar and fifty cents (\$1.50).

Sec. 46. There shall be only one (1) apprentice allowed to each fifteen (15) members of this Union.

Sec. 47. No apprentice shall be allowed to work for any employer except the one that he started serving his time with, unless granted permission by the Executive Board.

Sec. 48. No apprentice will be allowed to work on any job which takes more than eight (8) hours to complete unless accompanied by at least one (1) journeyman.

Sec. 49. All apprentices shall receive four dollars (\$4) per day for the first six (6) months and receive one dollar (\$1) on the day of each six months until out of their time.

Sec. 50. All members shall have been in Local Union No. 9 and in good standing for the period of one (1) year before they shall be allowed to take charge of work.

This section shall not apply to Contractors sending in their regular foreman from other jurisdictions.

## Foremen

Sec. 51. No foreman shall be recognized as such unless he has full power to hire and discharge whom he sees fit.

Sec. 52. All foremen will be required to appear before the Executive Board and get a foreman's certificate. The Executive Board can reject a foreman's certificate at any time he is proven guilty of violating any of the laws of this Local or International Union.

Sec. 53. Any foreman who insists on the erection of work which does not conform to the By-Laws of this Union is subject to having his certificate revoked, and of such a fine as the Union may decide.

There shall be a foreman on every job.

## Contractors and Solicitors

Sec. 54. Any member of this Union wishing to become a contractor or solicitor may do so provided that he is in good standing with the Union and serves notice in writing thirty (30) days in advance.

Sec. 55. All contractors and solicitors shall pay for the privileges of using the tools the sum of eighty-eight dollars (\$88), to be paid in two instalments, on the first of January and July, said fee to be put into the general fund to help defray the expense of the Union.

Sec. 56. No solicitor shall be allowed to work on any job unless accompanied by at least one journeyman of this Union, provided that the job does not take more than four (4) hours to complete.

Sec. 57. No contractor or solicitor shall be allowed to deposit his or their certificate back into this Union until he declares his intentions to do so in writing for thirty (30) days in advance.

Sec. 58. All contractors and solicitors will be required to pay members of this Union up to and including Thursday of each week, this article to apply to contracting plasterers and builders also.

Sec. 59. No contractor or firm shall be permitted to sublet and do work by the day at one and the same time.

## Miscellaneous

Any member who shall employ any unfair means against a brother member, such as speaking detrimental as to his ability as a workman or character, if found guilty, shall be fined not less than twenty-five (\$25.00) dollars.

Sec. 60. The holidays of this Union shall be New Year, February 22, May 30, Fourth of July, Labor Day, Thanksgiving, Christmas and a holiday on Saturday the year round.

When work on a job is shut down on account of the weather or other reasons, all members shall stop work,



the foreman to be allowed to continue.

Sec. 61. No member shall be allowed to work on Labor Day.

Sec. 62. Eight (8) hours shall constitute a day's work, between the hours of seven-thirty (7:30) A. M. and four (4) o'clock P. M.

Sec. 63. All journeymen shall receive their current wage when out of town, and car fare shall be given when outside the city limits.

Sec. 64. All overtime, waiting time, Sundays and holidays shall be double the regular rate.

Sec. 65. Any member who is hired by an employer and notified to go to a certain job and who then is not put to work by said employers shall receive not less than two (2) hours' pay.

Sec. 66. Any member leaving the jurisdiction of this Union shall travel in working hours, railroad fare and wages to be paid at the regular rate, and double time on Sundays and holidays.

Sec. 67. Any member who shall be discriminated against or discharged for being Shop Steward or other officer on duty for the Union, shall be placed back to work again or all members on the job will cease working.

There shall be a  $\frac{1}{2}$  hour pause between the regular day and overtime.

Any member guilty of talking about any of the proceedings of a meeting outside of the meeting place, or ac-

cusing any member of breaking any of the rules of the union without substantiation will be fined, on conviction, not less than \$5.00.

Any member knowing of another violating any of the provisions of this Constitution and not preferring charges against said member or members, shall be held equally guilty with said violators.

### Surplus of Help

Any member or contractor sending out of the city for help without first consulting the Business Agent shall be considered guilty of an unfriendly act if a contractor. If a member he shall appear before the Executive Board and on conviction of causing a surplus of help shall be treated accordingly.

### Salamanders

Where salamanders are used to heat a building, they must be covered and piped to a flue or outside opening, and no member of this local is allowed to work in any part of a building where the fumes from open salamanders can reach them.

Sec. 68. Any member being unruly during the meetings and becoming disorderly, shall be requested to leave the hall for the evening and if he refuses he shall be removed and a fine placed against him.

Sec. 69. All officers shall be treated with courtesy during the meeting and

any member violating this rule shall be fined not less than one dollar (\$1).

### Wood Lathing

Sec. 70. No smaller nails than a three (3) penny fine to be used, and all nails must be "blued."

Sec. 71. All lath shall be spaced with a uniform key; no jamming the keys together will be permitted.

Sec. 72. Lath shall be placed on floors above the second floor.

Sec. 73. All complicated work, such as churches, school houses, repair jobs, and all 5-nail work, etc., shall be day's work; the Business Agent shall decide as to which it is.

Sec. 74. All scaffolds of dangerous height or when scaffold is over six (6) feet such work shall be done by the day.

### Corner Beads

Sec. 75. All corner beads to be plumb and square. All rail beads shall not be clipped over eighteen (18) inches apart. All flanged beads to be clipped not to exceed two (2) feet apart.

### Plaster Board

Sec. 76. All ceilings for Plaster Board to be erected the same as for Metal Lath, and Plaster Board to be clipped on with suitable clips that may be provided.

Sec. 77. All stubs for Plaster Board partitions shall be spaced not more

than twenty-four (24) inches apart, and clipped on in a suitable manner.

Sec. 78. All Plaster Board partitions to be braced the same as for Metal Lath.

### Metal Lathing and Construction

Sec. 79. Nailed on metal work shall not be done with less than 4-penny nails or staples, and must not be nailed more than six (6) inches apart, with all centers tied.

Sec. 80. All studs and furring shall not be spaced more than sixteen (16) inches apart on centers where No. 24 gauge lath are used.

Sec. 81. Where any lighter lath than No. 24 gauge are used all studs and furring shall not be spaced more than thirteen and one-half (13½) inches on centers.

Sec. 82. Studs shall be thoroughly secured at tops and bottoms on all partitions, and anchored to the wall not more than five (5) feet apart.

All plasters shall have an iron not more than 2 inches from the wall.

Sec. 83. All partitions when four (4) feet in width or over shall be securely braced by the Lather, provided the partition is nine (9) feet high or over, and there shall be a two (2) inch flange turned and nailed on all walls and ceilings unless otherwise specified.

Sec. 84. Hangers for ceilings shall be installed not more than four (4)



feet on centers, and of not less than three-sixteenth rod or its equivalent, and when hanger is over six (6) feet in length they shall be made of flat iron or channel, unless otherwise specified.

Sec. 85. For carrying bars there shall not be used less than one and one-half ( $1\frac{1}{2}$ ) inch iron unless otherwise specified.

Sec. 86. All brackets not to be spaced more than sixteen (16) inches on centers, unless all members are furred horizontal.

Sec. 87. All false beams and cornices shall have hangers not to exceed four (4) feet apart.

Sec. 88. All lath to be tied not more than six (6) inches apart, all centers to be tied.

Sec. 89. All lath to be tied with No. 18 galvanized wire.

All splices are to be tied twice and all holes are to be not less than three-quarter ( $\frac{3}{4}$ ) of an inch deep.

## RULES OF ORDER

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Rule 1. The President having taken the chair, the officers and members shall take their respective stations and at the sound of the gavel there shall be general silence.

Rule 2. The President shall preserve order and pronounce the decisions of the Union on all subjects; he shall decide all questions of order without debate, subject to an appeal. Such appeal must be accepted, on which appeal no member will be allowed to speak, except the appellant and the chairman, when the Vice President shall put the question, as follows: "Shall the decision of the Chair stand?"

Rule 3. No member shall be interrupted while speaking, except by a call to order or for the purpose of an explanation, if he wants one.

Rule 4. If a member is called to order, he shall at the request of the Chair take his seat until any question is settled, when, if permitted, he may continue.

Rule 5. Each member when speaking shall stand and address the Chair, confine himself to the question under consideration, and avoid all personalities and improper language.

Rule 6. If two or more members arise to speak at the same time the

Chair shall decide which is entitled to speak.

Rule 7. All questions shall not be debatable until it has been seconded and stated by the Chair.

Rule 8. Before putting the question the Chair shall ask, "Are you ready for the question?" and if no member rises to speak, he shall put the question, and after he rises no member shall be permitted to speak upon it.

Rule 9. When the Chair is putting the question or addressing the Union silence shall be observed.

Rule 10. A member shall not speak more than once nor longer than five minutes on the same question until all who wish have spoken, and no member shall be allowed to speak but once, except the mover of the motion, without the consent of the Chair.

Rule 11. Any motion carried in the affirmative or negative shall not be subject to reconsideration unless such action takes place at the same or next regular meeting. No motion to reconsider shall be received unless made by a member who voted with the majority in the first instance and seconded by a member who voted with the majority.

Rule 12. Any member can call for a division of the question when necessary. When a question is before the Union no motion shall be in order except the previous question, to lay on

the table, to postpone indefinitely or for a time; said motions shall have preference in the order as arranged.

Rule 13. On a call of three members the previous question shall be put without debate in the following form: "Shall the previous question prevail?" which, if ordered, shall cut off all amendments and debate, but the amendment previously offered shall be voted upon in their order before the main question.

Rule 14. A motion to adjourn is always in order, which motion shall be decided without debate.

Rule 15. The President shall not have the power to adjourn the meeting except by the majority vote.

Rule 16. A motion to lay on the table shall be decided without debate.

Rule 17. The By-Laws shall not be altered or amended unless a proposal in writing is presented two weeks previous, when if two thirds of the members present at a special meeting vote in favor of the motion, it shall be adopted and not otherwise.

There shall be no appeal taken against the Constitution and By-Laws.

By-Laws Committee:

F. E. GARNER,  
N. GARNER,  
A. MULLOT,  
A. SULLIVAN,  
C. F. SCOTT, Chairman.





Mr. Townsend: May I interrupt and ask if Mr. Dean is the custodian of those records?

The Deputy Commissioner: Yes. Are you the custodian of those records?

22 The Witness: I am of all the records.

The Deputy Commissioner: But, of this particular record to which you are referring?

The Witness: No; this was taken off by the Recording Secretary, the records of the minutes of the meeting.

The Deputy Commissioner: But, are you the custodian of that record?

The Witness: No, I don't keep this record. This is kept by another man.

The Deputy Commissioner: Is he the Secretary of your organization?

The Witness: Not the Recording Secretary, no. He merely writes the motions made in the meetings, and so forth.

The Deputy Commissioner: This is the record of your Council?

The Witness: Yes. I am custodian of everything pertaining to that organization, but I don't keep this book in my possession. He brings this to the meeting and records the motions and transactions of the meetings, and takes it home, and then he brings it back at any time I call for these books. I have authority to take it at any time. In fact, I have authority to take the charter from the wall or all the records of the organization.

The Deputy Commissioner: The minutes you are referring to were approved by the organization at its regular meeting?

23 The Witness: Yes.

Mr. Townsend: I didn't hear that last question.

The Deputy Commissioner: I asked him if these minutes were approved by the organization and he said they were.

Mr. Townsend: In other words, he can recognize these minutes, identify them.

The Witness: Yes, I can identify them. I was at the meeting at the time they were made.

The Deputy Commissioner: Can you give the date the meeting was held?

The Witness: The date of this meeting was June 23, 1930; that was the nomination night of the various officers, the



business agent, Mr. Hood, and Opie Lindsay, and the nominations were closed; and, following that meeting was the election.

The Deputy Commissioner: What is the date of the election?

The Witness: The date of the special meeting was held on June 30, 1930. The meeting was called to order at 8:15 o'clock. President Jesse Mann was in the chair. The election of officers; that is, elected to serve for the next term, was as follows: President, Jesse Mann; Vice President, Robert Allen; Sargeant-at-Arms, T. A. Hill, M. Boden; Sargeant-at-Arms, Walter Ryan; Delegate to the Building Trades Council, B. Eastman; Delegates to the Central Labor Union, Arthur L. Johnson, Business Agent, Opie Lindsay.

The Deputy Commissioner: How long was the term for?

The Witness: One year.

The Deputy Commissioner: That was held when?

The Witness: June 30th, 1930.

The Deputy Commissioner: So that meant they took office the same day, did it?

The Witness: Yes, sir.

The Deputy Commissioner: Then they held office from July 1, 1930, to June 30, 1931; is that correct?

The Witness: Yes, sir. This was the election previous to the time. He was in office at the time he was killed. In June, 1930, and 1931, you will find the same records again. This was two years ago.

The Deputy Commissioner: I haven't got that straight. You had better read it again.

The Witness: On June 22nd, 1931, the meeting was called for nominations of officers. The nominations were for President, Robert Allen and Louis Monroe. Vice President, B. Eastman; Recording Secretary, C. Franklin; Sargeant-at-Arms, Ryan and Smith.

For the Executive Board, Donohue, B. Eastman, E. Downs, G. Gurner, A. Cole, C. Mack, J. Crummit, B. Eastburn, B. Stewart; Jesse Mann, Jr.; Jimmie Cale, Harry Hurley—those were the nominations for the Executive Board. For Business Agents, Lindsay and Hill.

The Deputy Commissioner: Does that mean Opie Lindsay?



The Witness: Yes, Opie Lindsay; T. A. Hill, Z. Ferguson, and R. Hood. That was the end of the nominations.

The Deputy Commissioner: That election carried for the term from July 1, 1931, to June 30, 1932, did it?

The Witness: Yes.

Mr. Townsend: When was the election held?

The Witness: The 29th is the election; the 22nd is the nominations. On June 29, 1931, the meeting was called to order, with President Mann in the chair. The following brothers were elected: President, Allen; Vice President, Eastman; Recording Secretary, C. Franklin; Sargeant-at-Arms, H. Ryan. The Executive Board, Donohue, Cole, Golding, Cale, and Hurley; Business Agents, Lindsay.

By Mr. Hoffman:

Q. Does that mean Opie F. Lindsay? A. Yes. After the election the new officers were obligated——

The Deputy Commissioner (interposing): That is not material.

By Mr. Hoffman:

Q. Mr. Dean, is there anything in the minutes showing the authorization of Mr. Lindsay to proceed to Fredericksburg, Virginia, to make an investigation of some  
26 kind? A. At the meeting of December 14, 1931, with the regular officers in the chair, a motion was made in the meeting of December 14, 1931, regularly moved and seconded, that the Business Agent, Lindsay, get together a Committee to go to Fredericksburg and find out the brothers' names who were working unfair and report the same at the next meeting. The motion carried.

The Deputy Commissioner: Is there anything in the minutes that shows what authority he had in the size of the selection of the committee and who the committee was?

The Witness: At the meeting of November 11, 1931, Mr. McDonald happened to be in Fredericksburg——

Mr. Herbert (interposing): That is going a long ways back.

The Deputy Commissioner: Yes; I don't think that is necessary.



The Witness: These are the records of the Executive Board. This was submitted before this went through.

The Deputy Commissioner: The Executive Board, in other words, takes such action as they want on recommendation of the main body, and this was taken up by the main body for such action as they wanted to take.

The Witness: Yes.

The Deputy Commissioner: And this is a meeting of the Executive Board?

27 The Witness: Yes, sir.

The Deputy Commissioner: That is provided for in the by-laws of the organization?

The Witness: Yes, sir.

The Deputy Commissioner: The Executive Committee consists of whom?

The Witness: The members I just mentioned.

The Deputy Commissioner: They are elected by the body itself?

The Witness: Yes.

Mr. Herbert: I believe the custodian of the records of the Executive Board is here.

The Witness: I was Secretary at this time.

The Deputy Commissioner: You took these minutes?

The Witness: Yes.

The Deputy Commissioner: This is your handwriting?

The Witness: Yes, this is my handwriting, the meeting of November 11, 1931. Brother McDonald and Jerry Gordon happened to be in Fredericksburg look- after a job, just riding around, and they happened in on this job, a hotel job in Fredericksburg that was under construction at the time, and Mr. McDonald and Mr. Gordon went into the job, they being members of No. 46, which is our New York Local, and saw two men in there and recognized them, having worked with them in New York and knowing them.

28 Mr. Townsend: Pardon me; but is he testifying from the records?

The Witness: Yes.

Mr. Townsend: Is that in the records, what you have testified about?

The Witness: Yes.

The Deputy Commissioner: Are you reading from the records?

The Witness: I was just stating what happened—



The Deputy Commissioner (interposing): Is that a part of the record?

The Witness: I will read the minutes of the meeting.

The Deputy Commissioner: Perhaps you had better read that.

The Witness (reading): "Meeting of November 11, 1931 (should be December 11, 1931—see correction on page 37). Board called to order at 7 p. m. Brother Jim Cole in chair. Brothers issued permits and transfers of Brothers Charles King, No. 4832, from Local No. 392 clear; E. R. Miller, No. 9580, from Local No. 5 clear. Transfers accepted. Brother McDonald reports a Brother Scott working unfair. He stated that him and one other man were on the job and talked with him and asked for a job and told them that \$5.00 was the top price. Brother Lindsay and Brother McDonald are going to visit the job Monday morning. Brother  
29 Jack Long asked for permit privileges."

I believe that is all in the record pertaining to the trip direct. We, in turn, read this to the Local as a recommendation, and the Local moved that Lindsay go to the job.

The Deputy Commissioner: That is the basis for the action taken at the regular meeting you read for us.

The Witness: This is, yes.

By Mr. Hoffman:

Q. Is that all your records contain with reference to the trip that Lindsay made to Fredericksburg? A. That is all. The meetings are here for examination. I have never went over them. The meeting here (indicating) and at various times you will find things were brought up where the members made appeals to their fines, and we have letters here from the International headquarters placing fines on the men on that job, Filkey and Scott. We placed a fine of \$100 apiece on each one. They were approved and now the fines stand. Those were the men identified on that job.

The Deputy Commissioner: Do I understand that Mr. Lindsay was to take his own committee to Fredericksburg?

The Witness: Yes.

The Deputy Commissioner: Were there any instructions on that?



The Witness: There were no instructions as to that. He was to take a committee to investigate the job.  
30 There was no particular committee mentioned, except that he is authorized to do that through the executive board, and he was to take a committee and report back to the organization.

By Mr. Hoffman:

Q. Did Mr. Lindsay have, by virtue of his office, the power and authority to select a committee of his own choosing? A. Yes.

Q. Did Mr. Lindsay select a committee to go to Fredericksburg? A. He did.

Q. Will you state the names of the men who accompanied him on that committee? A. George McDonald, Ray Golding and Arthur Mulloy and William Stearns.

The Deputy Commissioner: They are the witnesses you have here today, are they?

The Witness: Yes.

By Mr. Hoffman:

Q. Now, do you know whether Mr. Lindsay did make an investigation of the men, whose names you have mentioned, in Fredericksburg? A. Yes.

Q. And under the minutes which you have just called to the attention of the Commission, was Mr. Lindsay required to report back the result of his investigation at  
31 Fredericksburg? A. Yes.

Q. Do you know whether or not he prepared a written report of his investigation? A. No. He don't do that until he gets home. He generally takes the names of the men, the membership numbers. He had those on a pad which I got in Occoquan.

The Deputy Commissioner: You mean the names of the men he investigated in Fredericksburg?

The Witness: Yes.

By Mr. Hoffman:

Q. Do I understand you to say that the purpose of his trip to Fredericksburg was to investigate union labor? A.



Yes, Labor conditions. The men on the Fredericksburg job were union men, had cards in their pocket, and supposedly to be working under union conditions on a non-union job for \$5.00 a day. The local scale is \$13.00 a day, and that is a direct violation of the laws of our organization. That is why the investigation was sent through to headquarters.

The Deputy Commissioner: Was it necessary, in making investigation, to have more than one man on the committee?

The Witness: There are times when it is. At other times only the business agent goes into the job. In many instances you are run out; they won't let you in on the job.

On a non-union job the general contractor, as a rule,  
32 has a watchman, and if he spots any union man or labor trouble, they will refuse to let the business agent in on the job. Lots of times when the business agent goes in he meets with a fight, and resistance, and it was for that reason, I imagine, that Brother Lindsay took the men down there in order to go through the job so that these men don't get away.

By Mr. Hoffman:

Q. Isn't it a fact that he took these men along to identify these men who were working unfair? A. Yes, he did.

Q. Do you know anything about the accident which occurred on December 15, 1931, when Mr. Lindsay was——

The Deputy Commissioner (interposing): That is admitted; it is admitted that there was an accident and that he died as a result of it, or was there some other purpose in asking that question?

Mr. Hoffman: I thought counsel wanted to bring in something in the record about that.

Mr. Herbert: Well, you have three people who were riding in the car with him.

The Deputy Commissioner: I would like to know what the arrangement was for paying these men?

The Witness: The salary of the business agent is \$16.00 a day, or \$65.00 a week, and \$15.00 expenses. That \$15.00 is car money, and his salary for the week is \$80.00.

33 The reason that the \$65.00 is mentioned is because that is the scale of the journeymen lathers who are



working every day on the job. The compensation of the business agent is more, because he supplies his own car, and for gas and expenses he is allowed \$15.00 a week for that.

The Deputy Commissioner: That \$15.00 is extra for expenses?

The Witness: Yes.

The Deputy Commissioner: It doesn't become a part of the salary?

The Witness: It is a part of what he receives; I might call it \$80.00 a week.

The Deputy Commissioner: But you have to furnish your own car?

The Witness: Yes, sir.

The Deputy Commissioner: And \$15.00 of that is for upkeep of the car?

The Witness: Yes; that is the way I am paid.

The Deputy Commissioner: And is that the same basis on which Mr. Lindsay was working?

The Witness: Yes.

The Deputy Commissioner: That was the monthly salary?

The Witness: Weekly salary.

By Mr. Hoffman:

34 Q. Can you state if Mr. Lindsay received that rate of pay for the year next preceding his death on December 15, 1931? A. Yes. I have the checks here; they are all for \$80.00.

The Deputy Commissioner: Do you want to look at them?

The Witness: And these are the voucher receipts where he signed for the \$80.00 (indicating).

Mr. Herbert: Mr. Hill is here. He can identify them. He is the one who signed them.

The Deputy Commissioner: Do you have a record of the pay roll that you took this from, after the man was elected to the office?

The Witness: Yes. The official secretary, he understands this book more than I do (indicating).

The Deputy Commissioner: Who authorized the issuance of the policy in this case?



The Witness: The Local Union; that is, we were notified.

The Deputy Commissioner: Is this the pay roll that was the basis for your advising the insurance company as to what the pay roll would be?

The Witness: Yes.

The Deputy Commissioner: Did you get your figures from this book?

The Witness: I believe Mr. Herbert took that up with Mr. Hill.

35 Mr. Herbert: Not I. If he gave anyone the figures, it would be the auditor.

The Deputy Commissioner: Mr. Lindsay's wages were included in this book when it was submitted to the insurance company for audit?

The Witness: Yes.

By Mr. Hoffman:

Q. Mr. Dean, do you know whether or not Mr. Lindsay was required, under the by-laws and regulations of the union, to report back after he had made this trip, to the Trades Council Union, or whatever you call it? A. Yes. They were holding the meeting for him. They held the meeting up at the Building Trades Council to get a report from the Fredericksburg job.

The Deputy Commissioner: You mean they adjourned the meeting?

The Witness: That is, the Building Trades Council; that is, not the local.

The Deputy Commissioner: They delayed it?

The Witness: Yes, they delayed it for the report from Mr. Lindsay, because they knew he was going there that day. That is the affairs of the Building Trades Council. At times the business agent goes out to investigate a job, and he tells them in case any other business agent wants to go along with him, and after he investigates he is to  
36 report back to the Building Trades Council his findings; and that was what he was to do in this Fredericksburg job.

By Mr. Hoffman:

Q. Do you know whether Mr. Lindsay reported to the Building Trades Council before he went to Fredericksburg on December 15, 1931? A. Yes.



Q. What was the purpose of his reporting to that association? A. As I stated, in case anybody wanted to go along from the Business Trades Council, any business agent, to identify any of their men on the job and try to arrange so that union labor may be used.

Q. In the natural course of events, would he be required to make a report on his return to the Building Trades Council? A. Yes.

Mr. Hoffman: I don't think there is anything further. Mr. Dean said he would be willing to produce the policy. I hardly think that is necessary.

The Deputy Commissioner: No, that is not necessary.

Mr. Townsend: Unless you want it in the record.

The Deputy Commissioner: No; it was submitted to me under the regulations.

Mr. Herbert: It might be better if he had the  
37 classification in the policy.

The Deputy Commissioner: All right; as long as you are raising a jurisdictional question, I think it may be better that you put it in. It will be admitted, by agreement, as part of the record and marked Claimant's Exhibit No. 2.

(The document in question was thereupon marked by the reporter, "Claimant's Exhibit No. 2", and, as such, was received in evidence and is filed in the office of the Deputy Commissioner with the original papers in this case.)

Mr. Hoffman: Might I inquire with reference to one more thought?

The Deputy Commissioner: Yes.

Mr. Hoffman: I would like to have Mr. Dean state what are the working hours of the business agent of the union.

Mr. Herbert: He has stated that once.

The Deputy Commissioner: I don't know as I got that.

Mr. Herbert: He said they were called out at all hours of the day and night.

The Witness: They are subject to call at all times. There are no hours for a business agent.

The Deputy Commissioner: You mean they don't have to report at any place at a certain hour in the day?

The Witness: No.



The Deputy Commissioner: They have their own freedom to go as they please and come as they please at  
38 any time of the day and night?

The Witness: Yes. They make a weekly report to the organization.

The Deputy Commissioner: Then do you consider that as performing the duty required by the organization that they should leave their house at any time and come at any time, day or night, within their own discretion?

The Witness: Yes, because if they feel that there is a job that ought to be stopped, they stop it, or place men on it or take men off it.

The Deputy Commissioner: Then, as I understand it, Mr. Lindsay was authorized to go to Fredericksburg at his own time and return at his own time, and he would be considered in the course of his employment during that event, while he was going and coming; is that the understanding of the organization? A. Yes, that is the understanding of the organization.

By Mr. Hoffman:

Q. Would you say that Mr. Lindsay was subject to call for duty 24 hours of the day? A. Twenty-four hours of the day; at any time any business matters might come up. There are times I have been out until 12 and 1 o'clock at night. Last night I served two committees; one committee with the employers and then back to the Building Trades  
Council, and I didn't get home until after 12 o'clock,  
39 but I was still on duty for the organization.

The Deputy Commissioner: Will you state for the purpose of the record how many employers the Lathers' Union No. 9 had on July 1, 1931?

The Witness: About 110.

The Deputy Commissioner: A hundred employees?

The Witness: Yes.

The Deputy Commissioner: What does that include?

The Witness: The men under the jurisdiction of Local No. 9.

The Deputy Commissioner: The direct employees of the union, I mean?

The Witness: Oh, there are five.



The Deputy Commissioner: That are receiving a salary as members of this corporate body?

The Witness: There are five members on the executive board.

The Deputy Commissioner: What salary do they get?

The Witness: Fifty cents a meeting. That is more or less a voluntary service to the organization.

The Deputy Commissioner: All right.

The Witness: The Recording Secretary gets 50 cents a meeting; the President 50 cents a meeting; the Sargeant-at-Arms 50 cents a meeting, and the official Secretary  
40 gets \$10 a week.

The Deputy Commissioner: Are those the only officers that are on the pay roll?

The Witness: Outside of the business agent.

The Deputy Commissioner: Will you state that; I want a complete record.

The Witness: The business agent gets \$80.00 a week.

The Deputy Commissioner: And the business agent gets \$80.00 a week?

The Witness: Yes.

The Deputy Commissioner: As you have previously stated?

The Witness: Yes.

The Deputy Commissioner: Are they on the regular payroll of the union?

The Witness: Yes. There are committees appointed—if a committee is appointed they are paid at the regular meeting wages.

The Deputy Commissioner: Does the salary begin when they are elected and qualify and continue for the year?

The Witness: Yes.

#### Cross-examination.

By Mr. Townsend:

Q. You mean the Lathers' Union run a pay roll, but when you say "pay roll", you mean the books of the Secretary show the appropriations? A. The books of the  
41 Secretary will show that.

Q. You have no employees, in the sense of having any clerical hire, stenographers or secretaries or bookkeepers or anybody working full time for the union?  
A. No.



The Deputy Commissioner: Now, just a moment. Didn't you just tell us that the business agent was paid a salary regularly?

The Witness: He asked if there was any clerical help. Didn't you ask that?

The Deputy Commissioner: Yes, but he asked you if anybody was working full time.

The Witness: Yes, as I stated.

By Mr. Townsend:

Q. Mr. Dean, when were you elected? A. I was appointed the day after the accident, and then the following week was the—on January 4th, I was the delegate; the day after the accident I received my appointment until January 4th.

Mr. Hoffman: Of what year?

The Witness: 1932.

By Mr. Townsend:

Q. What happened at the meeting on January 4th? A. (Reading:) "The meeting was called to order by"—

Q. (Interposing.) You needn't read the whole 42 minutes. You said you were appointed the day after the accident until January 4th? A. Then I was elected as business agent.

Q. Who made that appointment? A. The President.

The Deputy Commissioner: Is that an authority vested in him by the by-laws?

The Witness: Yes. You will find it there.

The Deputy Commissioner: To fill vacancies?

The Witness: Yes.

By Mr. Townsend:

Q. Can you tell me where it is in the by-laws? A. Yes. Under the duties of the President, on page 8, Section 8.

Q. (Examining by-laws.) There is nothing in that paragraph that says anything about that. A. (Reading:) "It shall be the duty of the President to preside at all meetings; decide all points of order; preserve order; appoint all committees not otherwise herein provided for and have the deciding vote in case of a tie."



Mr. Herbert: There is nothing about appointing the business agent there.

The Witness: It is not necessary; the business agent is appointed to fill out the time.

By Mr. Townsend:

43 Q. The business agent, under the by-laws, is an elective officer, is he not? A. Yes.

Q. You testified, Mr. Dean, that your duties required your being called out at all times. Does that mean that if a call comes in from any member of the union you are called out? A. Yes.

Q. Is there anyone who gives any instructions to you during the day or the week? A. No, other than at the meetings, if there is any business to be taken care of I have to appear at the meeting and they instruct me to take care of the member.

The Deputy Commissioner: You mean that is done by the body itself?

The Witness: By the body.

By Mr. Townsend:

Q. Then, you handle your job without any supervision from anybody? A. Absolutely.

Q. You stated that this organization was an incorporated body; do you mean that it is actually incorporated under the laws of some State? A. Yes; the United States.

Q. Do you know where it was incorporated? A. 44 Yes; Cleveland, Ohio.

Q. That is the international organization? A. Yes.

Q. But, the local organization here; is the local organization incorporated under the laws of the District of Columbia? A. Yes.

Q. Did you acquire the certificate of incorporation first? I notice you have the constitution here printed. A. Yes.

Q. Have you the certificate of incorporation here? A. You will have to ask the Secretary about that. He might have it.

Q. Have you ever seen it? A. I have—no. No; I have seen the International Charter.



Q. But you don't know whether the Local is actually incorporated as a corporation in the District of Columbia?  
A. No; I don't know.

Q. You don't know that? A. No.

Q. Then, your testimony about the Local here being incorporated was based on the International? A. The International.

Q. You know, as a matter of fact, whether the International is an actual corporation or an association?  
45 A. No; but I imagine they are.

Q. You don't know of your own knowledge? A. I don't know of my own knowledge, no.

Q. The business agent is the officer of this union who gives orders to the men about jobs, calling men off, and so forth? A. Yes.

Q. You have the authority to call men off a job? A. Yes.

Q. Is there anybody else in the union who has that authority? A. No.

Q. The President can not even do it, can he? A. No.

Q. Now, I see that these minutes have—just a minute. Where are the minutes of the Executive Committee? A. (Producing minutes.)

Q. (After examining said minutes.) Do you know how it happens that the minutes of the meeting of November 11, 1931, follow the minutes of December 4, 1931? A. No. (Examining minutes.) Yes; this is a mistake. It should be December 11th. The 4th is on Friday night, and December 11th would be the following Friday night. It is just  
a mistake in placing that there.

46 Q. You mean the minutes are in error and not the position in the book? A. No.

The Deputy Commissioner: You mean the date is erroneous?

The Witness: Yes. Instead of November 11th, it should be December 11th.

Q. These are your own minutes that you took? A. Yes.

Q. Were they written down immediately after the meeting or at the meeting? A. Yes, at the meeting.

Q. These minutes are in your handwriting, starting with this page? A. Yes.

Q. The others are not yours? A. Some of it is mine.

Q. Is this yours (indicating)? A. This is mine.



Q. This printing is yours also? A. That is mine.

Q. Is this pencil writing yours? A. No. That is, right after that. Mr. Lee was secretary of the board then.

Q. Mr. Lee succeeded you? A. Yes.

47 Q. Is the secretary elected or appointed? A. Elected.

Q. All the officers are elected as a matter of fact, are they not? A. Yes.

Q. When were you elected secretary; at the annual meeting in June? A. No. I filled the vacancy. I was not elected. I was appointed to fill the vacancy of Pete Donohue that was elected to the Board. He couldn't serve for some reason of his own, I don't know, and he didn't serve, and they appointed me on the Executive Board from the Chair.

Q. How did it happen that you became a member of the Building Trades Council; how does it happen that the business agent of your local becomes a member of the Business Trades Council? A. By law. The International Union, it compels us to affiliate with all Central bodies, such as the Building Trades Council and the Federation of Labor and the Labor Union.

Q. Your Local designates the official who shall become a member of the Building Trades Council? A. The business agent automatically becomes a member of the Building Trades Council. He is compelled to be a member of the Building Trades Council.

48 Q. Where is the authority for the business agent automatically becoming a member of the Building Trades Council; is there a resolution? A. You will have to get that resolution from Mr. Locher of the Washington Building Trades Council.

Q. I mean, the authority by which your Local selects you as its representative on the Building Trades Council? A. You mean, find it in the by-laws?

Q. Yes; I think that is important? A. That is taken care of by the International which require the States to be affiliated with the other central bodies.

Q. You have testified that the International by-laws, as I understand it from you, does not designate the particular officer in your union? A. No; they are elected.



Q. How is that particular officer in your union selected to become a member of the Building Trades Council? A. They are elected.

The Deputy Commissioner: By virtue of that, then as business agent you become automatically a member of the Building Trades Council?

The Witness: Yes.

The Deputy Commissioner: Then, that is provided in the International?

The Witness: Yes, in the International. The  
49 Building Trades Council, in that, you become an executive member of the Council.

The Deputy Commissioner: You are trying to find out where that authority comes from?

Mr. Townsend: Yes, whether it is based on a resolution selecting the business agent as its representative rather than its president or secretary or anyone else.

The Witness: It is just a matter—he automatically, the business agent representing the union, automatically becomes a member of the Building Trades Council.

The Deputy Commissioner: That council is affiliated with the International Association; is that correct?

The Witness: Yes. Then we elect our delegates; two delegates for each 100 men.

By Mr. Townsend:

Q. Your union elects two delegates to the Building Trades Council? A. Yes, two besides me.

Q. Does your union elect you as a member of the Building Trades Council? A. I automatically become a member of the Building Trades Council when I am elected business agent.

Q. That doesn't appear in the by-laws under the duties of the business agent? A. Yes, it does.

50 Q. Read Section 13, page 9; I don't find it in there.

A. Did you read the whole section?

Q. I will ask you if you can point out any specific provision in there covering that. A. It says, "It shall be the duty of the business agent to visit each and every job," and "to have full authority to call out any member committing an infraction of the constitution and by-laws, and to attend to all other business the union may direct; he shall at all times when on duty and attending to business of the union,



abstain from all intoxicating liquors; he shall be elected for a term of twelve months and to act only when called upon or when necessary; upon charges being preferred against him for failing to perform his duties," but that doesn't bring that out. But, he automatically becomes a member of the Council.

Q. May I call your attention to Section 15 on page 10, which relates to delegates to the Building Trades Council?

A. Yes.

Q. Do you know if any action has ever been taken by your union electing or appointing Mr. Lindsay as a delegate to the Building Trades Council? A. I understand he doesn't have to be appointed by the union; it is compulsory for him to be a member of the Building Trades Council when elected.

Q. Tell us where that compulsion arises? A. I  
51 am trying to tell you that, that our International, of which we are a member, demands that we become a member of the Building Trades Council.

Q. It doesn't say what officer shall be a member of the Building Trades Council, does it?

The Deputy Commissioner: I wonder if we can not bring in Mr. Locher to show that, now.

Mr. Hoffman: Yes; he is secretary to the Building Trades Council.

The Witness: I can tell you why we have to be there.

Mr. Townsend: Well, if he knows.

The Deputy Commissioner: We will excuse Mr. Dean now and bring Mr. Locher in and ask him that.

(The witness was thereupon excused and retired from the witness stand.)

Thereupon **John Locher** was called as a witness for and on behalf of the Claimant, and, having been previously duly sworn by the Deputy Commissioner, as above indicated, assumed the witness stand, and, upon examination, testified as follows:

#### Examination.

By the Deputy Commissioner:

Q. What is your full name? A. John Locher.

52 Q. What is your address? A. 3423 O Street.



Q. Are you in any way connected with organized labor or unions? A. Yes, sir.

Q. With what association? A. I am secretary of the Washington Building Trades Council.

Q. With what is that affiliated? A. That is a Council of unions composed of twenty-four local unions of the District of Columbia, affiliated with the American Federation of Labor.

Q. Does that have any connection or affiliation with the International Association? A. It does.

Q. In what way? A. The Building Trades Department—

Q. (Interposing.) In what way? A. Of the American Federation of Labor.

Q. Well, in what way? A. The Building Trades Department is a massed body of the Building Trades Council. There is one in each city and the Building Trades Department has supervision over them.

Q. How is that Council made up? A. The Council is made up of various local unions in the city of Washington as members.

Q. What connection has the business agent, for instance, of the Lathers' Union, local No. 9, with the Council? A. The business agents of all unions, including the Lathers', they are affiliated with the Council, are officers of the Building Trades Council, and they are members of the Executive Board.

Q. By what authority? A. It is compulsory by other international unions, and their local unions compel them to be on the Executive Board of the Building Trades Council.

Q. Then, does the election of a business agent automatically carry with it a membership in this Council? A. Yes.

Q. Is that compulsory by the International Board? A. It is compulsory by the Building Trades Department and by the Building Trades Council.

Q. Is that the by-laws and constitution? A. This is the by-laws and constitution.

Mr. Townsend: This is the by-laws of the Building Trades Council.



The Witness: That is the by-laws of the Building Trades Council; they have that, each local union that is affiliated with it. It is compulsory that he be appointed and give him credentials as business agent as their representative  
54 in the Council—or, that is, as a member of the Board of Directors, as we call it, the Executive Board of the Council.

Mr. Hoffman: Does the International By-Laws provide that the business agent of the local union shall be the representative of the Building Trades Council?

The Witness: Yes; he shall be one of the representatives. The representation is based on the number of memberships, but it specifies that the business agent must be a delegate to the Council and must be a member of the Executive Board of the Building Trades Council.

By the Deputy Commissioner:

Q. Does it require an election to confirm that, or just merely the election of the business agent? A. The election in his own local union as business agent carries that, and then it is compulsory that they give credentials, and I have the credentials of Mr. Lindsay in my files.

By Mr. Townsend: And that is by virtue of the by-laws of the Building Trades Council?

The Witness: By virtue of the by-laws of the Building Trades Council.

Q. So that the business agent is a member of the Executive Committee of the Building Trades Council? A. That is correct.

Mr. Townsend: I think, Mr. Hoage, it would be  
55 wise, to have, certainly, a portion of the Building Trades Council by-laws, which cover this point, in the record.

The Deputy Commissioner: Have you that here?

The Witness: I haven't that here.

Mr. Townsend: I do not think we would want the whole constitution and by-laws copied into the record.

The Witness: It is just a small book.

Mr. Hoffman: Is it something like that one (indicating)?

The Witness: It is similar to that.



Mr. Townsend: We can stipulate with reference to that, can we not?

Mr. Hoffman: Can you furnish us with several copies, so that counsel may have a copy?

The Witness: Yes.

The Deputy Commissioner: Then, by stipulation, without copying it into the record, the constitution and by-laws of the Building Trades Council will become a part of the record.

Is that satisfactory, gentlemen?

Mr. Hoffman: Yes, sir.

Mr. Townsend: That is satisfactory.

(A copy of the constitution and by-laws of the Washington Building Trades Council was marked by the reporter, "Claimant's Exhibit No. 3," and, as such, was received in evidence and is filed in the office of the Deputy Commissioner as a part of the record in this case.)

56      CONSTITUTION AND BY-LAWS OF THE WASHINGTON  
BUILDING TRADES COUNCIL OF THE DISTRICT OF  
COLUMBIA AND VICINITY.

56-1    Constitution and By-Laws of the Washington  
Building Trades Council of the District of Colum-  
bia and Vicinity.

56-2                      *Order of Business.*

1. Roll call of officers.
2. Reading the minutes of previous meeting.
3. Reading of Credentials.
4. Communications and Bills.
5. Reports of committees.
6. Roll call of delegates.
7. Unfinished business.
8. New business.
9. Reports of Locals.
10. Good of the Council.
11. Receipts and expenses.
12. Adjournment.

#### Obligation of Delegates.

The obligation to delegates shall be as follows: I,  
—— —, do truly promise and pledge my word of honor



to obey the laws of this Council, and that in time of trouble to render every assistance which is in my power to do. I further promise not to divulge any of the business of this Council except to my own organization when in session.

56-3

*Constitution and By-Laws.*

Article I.

Name and Jurisdiction.

Section 1. This organization shall be known as the Washington Building Trades Council of the District of Columbia.

Sec. 2. The jurisdiction of this Council shall completely cover the building industry either in erection, repair or alteration, and this Council is endowed with full autonomy over all matters affecting all workmen engaged in said industry, when in conformity with the laws and decisions of the Building Trades Department.

Article II.

Membership.

Section 1. This Council shall be composed of delegates duly chosen as hereinafter prescribed, by any bona fide Union that is affiliated with its national or international organization, when such organization is affiliated with the Building Trades Department, American Federation of Labor, and whose membership is composed of men engaged in the building trades.

Sec. 2. Delegates eligible to membership in order to be admitted, shall produce credentials duly signed by the presiding officer, and Recording Secretary of the organization, with seal affixed.

Sec. 3. No person engaged in any business, other than his trade, or who is a contractor of any description, shall be eligible as a delegate. Delegates to this Council shall be journeymen, commanding the current rates of wages and members in good standing in their Local Unions for a period not less than six months. Officers or Business Agents shall be considered journeymen, provided they are under salary as such by their Local Unions.



56-4

## Article III.

## Representation.

Section 1. Representation in this Council shall be as follows:

|                                     |               |
|-------------------------------------|---------------|
| 100 members or less .....           | 2 delegates.  |
| More than 100 members and less than |               |
| 200 members .....                   | 3 delegates.  |
| 200 members or more .....           | 4 delegates.  |
| 400 members or more .....           | 5 delegates.  |
| 800 members or more .....           | 6 delegates.  |
| 1,600 members or more .....         | 7 delegates.  |
| 3,200 members or more .....         | 8 delegates.  |
| 6,400 members or more .....         | 9 delegates.  |
| 12,800 members or more .....        | 10 delegates. |

Provided: That where district councils exist the representation in this body shall come through said district councils and no district council or local union shall be entitled to more than ten delegates.

Sec. 2. Delegates to this Council shall be elected for a term of one year. Absentees may be represented by proxy in case of sickness or absence from the city. In all such cases special credentials must be presented.

## Article IV.

## Officers.

Section 1. The officers of this Council shall be a President, Vice-President, Executive-Secretary-Treasurer, Recording Secretary, Sergeant-at-Arms and three Trustees. The Trustees to act as auditors.

Sec. 2. Nominations shall be made on the second meeting in January and the election shall take place at the third meeting in January. No nominations shall be made on election night.

Sec. 3. Nominees for election shall be declared elected upon receiving the highest number of votes cast. Only the delegates present are entitled to vote. Retiring delegates (if officers) shall serve until their successors are installed in office.



56-5

## Article V.

## Qualification for Office.

Section 1. To qualify for office the organization represented must be in good financial standing with the Council.

Sec. 2. No organization shall fill more than one of the offices of this Council.

Sec. 3. Should any officer absent himself from three successive meetings unless excused, his office shall be declared vacant and a new officer elected.

## Article VI.

## Duties of Officers.

Section 1. President.—It shall be the duty of the President to preside at all meetings of the Council, preserve order and decorum therein, and strictly and faithfully enforce obedience to the Constitution, Rules of Order and rules and regulations that may be made from time to time; he shall exercise a general supervision over the officers of the Council and see that each performs his specific duties according to law; he shall see that none of the funds of the Council are improperly or unlawfully expended; he shall sign all orders on the Treasurer, and such other documents as the laws and usages of the Council may require; he shall put in the usual parliamentary manner all questions coming before the meetings and announce the decision thereon; he shall appoint all committees according to law and as instructed by the Council. In the absence or disqualification of any officer, he shall appoint some member temporarily to fill the office; he shall vote on all questions and act as ex-officio member on all committees.

56-6 Sec. 2. Vice-President.—It shall be the duty of the Vice-President to assist the President in preserving order and decorum during meetings; he shall preside over the meeting in the absence or disqualification of the President, or when called on by that officer; in such cases he shall perform all duties and functions of President, and he shall be subject to the same rules of discipline while so acting.

Sec. 3. Executive Secretary and Treasurer.—The Secretary shall keep an accurate record of the proceedings of



this Council in a book provided for that purpose; he shall enter on the same a statement of the receipts and expenses of each meeting. He shall prepare and keep an accurate roll of the delegates to the Council and their addresses, and shall call said roll at each meeting, noting the absentees; he shall notify the Council and the delegate's respective Union whenever a delegate has been absent for three successive meetings; he shall conduct all official correspondence and have charge of the seal of the Council, affix the same to all official documents; he shall draw and sign all orders authorized by the Council; he shall receive all moneys due the Council, receipt for same and shall have charge of the working cards issued by the Council; receive all moneys due the Council; he shall keep an account of the standing of the different organizations with this Council, and when organizations fall in arrears he shall notify the Council of the same. He shall, before assuming office, file a bond with the Board of Trustees in the sum of \$2,000 for the safe-keeping of the money intrusted to him (the Council to defray the cost of same). He shall not be allowed to keep more than \$100 on hand at any one time; he shall deposit all moneys in excess of that sum in a bank (designated by the Council). The Secretary shall be stationed at headquarters; he shall have charge of same, subject to the authority of the Trustees. He shall be present at all regular and special meetings of the Council and the Executive Board; he shall be secretary of the Executive Board without vote in same; he shall receive a salary and legitimate expenses to be paid weekly. At the expiration of his term of office he shall render a correct report to the

56-7 Council and deliver to his successor in office all books and properties in his possession belonging to the Council. He shall receive for his services such compensation as the Council may determine and he shall not be required to work more than five days per week.

Sec. 4. Sergeant-at-Arms.—It shall be the duty of the Sergeant-at-Arms to guard the door during meetings; he shall admit none but delegates, except when otherwise instructed by the Council; he shall enforce order under the direction of the President; he shall take the name and organization of all delegates coming in after roll call; he shall also take the name and address of all new delegates



(blanks for this purpose shall be provided); he shall announce the names of all visitors to the meetings.

Sec. 5. Board of Trustees.—The Board of Trustees shall have supervision over all funds and property of the Council; they shall investigate and approve all bills before being passed upon by the Council; they shall examine and approve all officers' bonds; they shall instruct the Secretary in the supervision of headquarters; they shall transact such other business as the Council may instruct; a majority shall constitute a quorum for the transaction of business. At the expiration of their terms of office they shall make a full report and turn over all properties in their possession to their successors in office.

Trustees shall thoroughly check and audit all accounts, books and deposits of the Secretary-Treasurer and the Trustees shall make report to the Council in writing not later than the third meeting after the end of each quarter.

## Article VII.

### Committees.

Section 1. There shall be appointed by the President immediately after his election with the consent of the  
56-8 Council, the following standing committees: Credential Committee, Grievance Committee, of three members each; Organization Committee of five members; Legislative Committee of five members; and, when occasion requires, a special committee of five, on arbitration.

Sec. 2. Any delegate appointed on a committee with his consent and who shall refuse or neglect to perform his duty, shall be reported to his organization by the Council through the Secretary.

## Article VIII.

### Duties of Committees.

Section 1. The Credential Committee shall investigate all applications of organizations seeking affiliations, also examine all credentials and wait on the delegates in the ante-room to ascertain if they are eligible to admission, as provided for in Article II.

Sec. 2. The Grievance Committee shall investigate all grievances that may be referred to the Council from time



to time by organizations or delegates affiliated with this Council. All grievances shall be referred to the Grievance Committee without debate.

Sec. 3. The Organization Committee shall endeavor to organize any building trade that is not organized; they shall endeavor to get all eligible building trades unions not affiliated with the Council to affiliate with same; they shall also arrange for and conduct such mass meetings as may be determined on from time to time by this Council.

Sec. 4. The Arbitration Committee shall investigate and endeavor to arbitrate all disputes between this Council and any Union when such dispute shall be officially referred to this Council for settlement by the organization affected.

## Article IX.

### Executive Board.

Section 1. There shall be established (as part of this Council) an Executive Board, composed of the  
56-9 properly elected Business Agents of the various organizations affiliated with this Council. Organizations having two or more Business Agents shall designate which one of them is to represent them on the Executive Board. Organizations having no Business Agent shall be entitled to representation on the Executive Board and they shall designate which one of their delegates to the Council is to be their representative.

Sec. 2. The Executive Board shall elect a President and Vice-President and shall adopt such rules as shall be necessary for its guidance, subject to the approval of the Council.

Sec. 3. The Secretary shall keep a correct record of the proceedings of the board and report the same in full at each meeting of the Council for their approval.

Sec. 4. The Executive Board shall be empowered to act on all occasions on behalf of the Council and to deal with all emergencies that may arise in the interim between meetings.

### Rules of Executive Board.

(a) All trades who have Business Agents on the street and who are by virtue of their office members of the Executive Board of the Council shall hold one meeting each week, said meeting to take place on Wednesday at 10 A. M., for



the purpose of transacting such business as may come before it.

(b) All members of the Executive Board, who are salaried representatives of their organizations, must attend these meetings, and their failure to do so will be cause for the Secretary to notify their Union of their absence.

(c) But it is understood that any member of the Executive Board shall be excused if he is sick, absent from the city or has death in his family. He shall delegate some member of his craft to act in his stead as proxy, at times when it is impossible for him to attend, and it will be the duty 56-10 of the Secretary to notify his Union who is representing him. It is also required that the delegates meet punctually at the hour stated. Seven trades shall constitute a quorum.

#### Order of Business for Executive Board.

Meeting called to order.

Roll call of delegates.

Reading of minutes.

Communications.

Report of troubles or disputes.

Reports of Committees.

New business.

Unfinished business.

Nomination and election of officers.

Good and welfare.

Adjournment.

#### Article X.

##### Meetings and Quorum.

Section 1. The regular meetings of this Council shall be held on Tuesdays of each week at 8 P. M. sharp, if a quorum be present, and adjourn no later than 11 P. M., except otherwise ordered by a majority vote.

Sec. 2. Special meetings may be called by the President on the written request of delegates of five or more organizations in good standing, with their signature attached; said request shall clearly specify the object for which the special meeting is called. No other business shall be transacted at such special meetings than that set forth in the call. The



Executive Secretary-Treasurer shall notify all delegates of such meetings.

Sec. 3. One-third of all organizations in good standing shall constitute a quorum for the transaction of business in regular meetings, and a majority of all organizations in good standing shall constitute a quorum for the transaction of business in special meetings.

56-11

## Article XI.

### Fines and Dues.

Section 1. The funds for maintenance and expenses of this Council shall be raised from the revenue obtained by issuing quarterly working cards at fifty cents per quarter, per member.

Sec. 2. All organizations affiliated with this Council must take out working cards according to the numerical strength of their organization in good standing.

Sec. 3. Secretaries of affiliated District Councils and Unions are required to notify the Secretary of this Council quarterly (on blanks to be furnished for that purpose) of the numerical strength of their organizations in good standing subject to verification, by the first meeting nights of the Council held in the months of February, May, August and November of each year. To be in good standing, each organization shall take out and pay for their full quota of working cards before the expiration of the first months in each quarter. Namely, the months of January, April, July and October, based on last month of each quarter.

## Article XII.

### Agreements.

Section 1. Agreements or demands for an advance in wages or an abridgment in the hours of labor shall be presented to this Council in writing for its approval and indorsement: Provided, however, that while local organizations shall abide by and conform to existing agreements with their employers, they shall not on the expiration of such agreements enter into any new agreements containing any clause which will prevent their obeying the laws of this Council or from giving each other prompt and effective as-



sistance, or their combining for united action and material support.

56-12     Sec. 2. Said agreement or demands shall give full particulars, and shall be read at two meetings before final action is taken, when, if concurred in by a two-thirds fote of all delegates present and voting in the meeting, the action shall be binding. This does not prevent any organization from acting on its own responsibility. But any organization ordering a strike on its own responsibility shall not receive any assistance from this Council except by a two-thirds vote.

Sec. 3. All organizations must be affiliated and in good financial standing for six months before said agreement or demands shall be considered by the Council.

### Article XIII.

#### Grievances and Arbitration.

Section 1. Any organization or delegate having a grievance shall present the same in writing to the Council. No delegate shall sit in judgment on any case affecting the trade in which he may belong. No trade directly involved in a dispute shall have a vote.

Sec. 2. When any trouble occurs on any building or job affecting any organization represented in this Council, it shall be the duty of the Business Agent of said organization to immediately notify the Executive Secretary-Treasurer or Grievance Committee who shall take the necessary steps to bring about a satisfactory settlement.

Sec. 3. When a strike is ordered it shall affect all work being done for contractors, owners, architects and lessees connected with the trouble in question.

### Article XIV.

#### Suspension of Organization.

Section 1. Any organization belonging to this Council failing to have delegates present at the meetings of the Council for the space of three months, or failing to  
56-13 take out quarterly working cards in accordance with the provisions of Article XI, Section 2, shall stand suspended: Provided, however, the organization does not



appeal to the Council before the expiration of such term, in which case the Council shall have discretionary power.

Sec. 2. Any organization standing suspended may be reinstated by a two-thirds vote of the Council, but the organization must first pay up all dues and other indebtedness for which it may be in arrears.

Sec. 3. A failure of any organization to comply with the Constitution or other rules and regulations of the Council shall be punishable by a reprimand, suspension, or expulsion, when reported on by the Grievance Committee and acted on by this Council, such action to be taken by a majority delegate vote.

### Article XV.

#### Suspension of Delegates.

Section 1. When any delegate absents himself from three successive meetings of the Council, the Executive Secretary shall notify the organization to which such delegate may belong to send new credentials for his reinstatement or a new delegate.

Sec. 2. Any delegate who shall persist in a course of conduct degrading of itself or calculated to bring this Council into odium, shall be excluded from the hall and his organization shall be notified to have the offending delegate withdrawn.

### Article XVI.

#### Trade Rules.

Section 1. It shall be the special duty of this Council to use the united strength of all trades represented herein to induce all non-union men to conform to and obey the laws of the organization to which they should properly belong.

Sec. 2. The members of all unions affiliated with 56-14 this Council are prohibited from working on any job with workmen not holding the current quarterly working card of this Council when the organization to which said workmen are employed is affiliated with the Council, provided the Council so orders.

Sec. 3. Any organization that is not represented in this Council shall not be protected on any building or job until affiliated with this body, except by unanimous consent of this Council.



Sec. 4. No member of any organization affiliated with this Council shall be permitted to work on any building or job under police protection in case of a strike, or to handle any material that is the product of convict labor.

Sec. 5. It shall be unlawful for members of any organization to do work pertaining to that of another organization without its consent.

Sec. 6. All members of affiliated organizations are compelled to show their working cards when requested by the Business Agents or members of any affiliated organization working on the job, irrespective of trade, who are themselves in possession of cards.

## Article XVII.

### General Laws.

Section 1. When any dispute as to trade rules arises in any trade that is divided into two or more organizations affiliated with this Council, if the dispute can not be settled by representatives of the several organizations of the affected trade in joint session, then the matter shall be presented to this Council.

Sec. 2. When a salaried officer of this Council neglects his duties and does not give satisfactory reasons therefor, he shall forfeit his salary for such time as may be deemed just by this Council.

Sec. 3. Regular order of business shall not be 56-15 suspended except for admission of delegates or by a two-thirds vote of all delegates present.

Sec. 4. Any delegate who shall become indebted to this Council in any manner shall not be allowed a voice until such debt shall be paid, and the same reported to the organization.

Sec. 5. No dissolution of this Council shall take place so long as two organizations in good standing shall desire to remain.

Sec. 6. The funds of this Council shall not be used for any purpose other than the legitimate expenses required by the Constitution.

Sec. 7. No appropriation of the funds of this Council in excess of ten dollars shall be made for any purpose, other than current expenses, unless authorized at a special or called meeting.



Sec. 8. All parliamentary questions shall be decided by Roberts' Rules of Order.

Sec. 9. All organizations affiliated with this Council in making and amending their Constitution and By-Laws shall not conflict in any manner with the rules and regulations of this Council.

Sec. 10. Any amendment to the Constitution or By-Laws shall be submitted in writing, referred to a committee for consideration and read at two consecutive meetings of the Council before being voted upon. A two-thirds vote of all delegates present shall be required for its adoption.

NOTE.—Wherever the word Secretary may occur in this Constitution and By-Laws it shall be interpreted to mean Executive Secretary-Treasurer.

Adopted April 23, 1929.

Approved by the Building Trades Department of the American Federation of Labor May, 1929.

57 By Mr. Townsend:

Q. Do you know of your own knowledge, Mr. Locher, whether or not Mr. Lindsay, when he made this trip to Fredericksburg—well, you would not know anything about Mr. Lindsay's trip to Fredericksburg yourself, personally?  
A. Yes.

The Deputy Commissioner: All right, how would you happen to know that; tell us, Mr. Locher.

The Witness: Why, the board of business agents, which is the Executive Board—that is, each business agent reports at the Council's office in the Mather Building every morning, and they confide in one another as to where they are going and the nature of their business, and Mr. Lindsay was in that morning—

Mr. Hoffman: What morning was that?

The Witness: On the morning of the accident; I am not familiar with the date.

Mr. Hoffman: Was it December 15, 1931; that is the date of the accident.

The Witness: And he did say, in the presence of the several agents there, business agents—



By Mr. Townsend:

Q. Including yourself? A. No, I was not present there.

Mr. Townsend: I don't think that is competent.

58 The Deputy Commissioner: That would be hear-say then, wouldn't it?

Mr. Townsend: Yes.

By the Deputy Commissioner:

Q. Do you know who was present? A. Well, Edward Faulconer.

Q. Were there any others? A. No, but I know he said that in the presence of Mr. Faulconer.

Q. How do you know that, Mr. Locher? A. By Mr. Faulconer speaking of it at the meeting.

Mr. Townsend: Then, I suggest that we dispense with this gentleman and call Mr. Faulconer.

The Deputy Commissioner: Is Mr. Faulconer available?

Mr. Hoffman: I think he is. I think he was subpoenaed. However, I think this man can bring out by the records which would just show what he is attempting to relate.

The Deputy Commissioner: All right.

By Mr. Hoffman:

Q. Did you put that into the record? A. No. He had no reason to tell me. However, I would gladly bring the records here. They are open to this body if you care to have them.

The Deputy Commissioner: What about the records that you want to put in?

59 Mr. Hoffman: I just want to know if his records show that Mr. Lindsay advised this man prior to his talk to Faulconer on December 15th? A. No; our records wouldn't show that. Our records would show that Mr. Lindsay was to be present that night at 8 o'clock and attend a meeting we were having that night to represent the Lathers at the meeting that night and the records would show that he was absent on that night.

By Mr. Hoffman:

Q. If he had returned and attended that meeting, would he have been required to make a report of the trip to Fredericksburg? A. He would.

Mr. Hoffman: I think that is all.

Cross-examination.

By Mr. Townsend:

Q. In connection with that last statement, Mr. Locher, do you know if there is any record in the proceedings of your Council as to Mr. Lindsay's making the trip to Fredericksburg? A. No; there would be no record in there of Mr. Lindsay making the trip to Fredericksburg, unless he had been present at that meeting that night and made a report, which would have been entered on the books at that time. All of the reports are made weekly, as you will see in this little book, in routine; they are under the reports of the locals.

60 Q. Was there anything brought to the attention of your Council's office with reference to the trip of Mr. Lindsay and about the Fredericksburg situation? A. Yes, there are reports to the Council. That job was freely discussed there in reference to it being a non-union job for some trades. I didn't go on that particular trip and I, myself, have made several trips to Fredericksburg with Mr. Lindsay and other business agents on work of the same nature.

Q. Is it a part of the work of the Building Trades Council to check up on those things? A. To assist the business agents in unionizing—it is the business of the business agent to go to any job where there is a non-union condition and do everything possible to unionize the job. In the event he is not successful, then he brings back a report to the Council, sometimes verbal, and reports to the Executive Board, of which he is a member, that he has gone as far as he can and there is nothing further he can do alone, and asks for the assistance of the Council, and then a committee is appointed, and generally the Secretary of the Building Trades is always on that committee and goes with that



committee. And then the committee will report back to the council, or possibly, if necessary, the committee will call a strike on the job.

By Mr. Hoffman:

61 Q. Do your records show that Mr. Lindsay had previously made reports to the Trades Council? A. Yes, they would.

Q. On other matters? A. Yes, on other matters. I don't know that it would show anything here because Mr. Lindsay had never completed his work.

The Deputy Commissioner: You mean on this trip?

The Witness: I mean on this trip. He hadn't got along far enough—no doubt, Mr. Lindsay had a report to make to our Council on the night he was killed.

Mr. Hoffman: I think there is nothing further that I can ask.

Mr. Townsend: I think that is all, with the understanding that this gentleman will secure copies of the by-laws for the record.

The Deputy Commissioner: Yes. You mean a copy of the by-laws of the Building Trades Council?

Mr. Townsend: Yes.

The Witness: How shall I forward them to you?

The Deputy Commissioner: Just send them to the reporter and he can furnish one to each Council.

Mr. Townsend: I understood him to say there was no minute record of Mr. Lindsay's going to Fredericksburg, no record in his minutes.

62 The Witness: That is right. That would not be until he had made his final report.

Redirect examination.

By the Deputy Commissioner:

Q. Just a moment. Are you a member of the Trades Council? A. I am.

Q. Was the question discussed and was he at any time authorized by your Council to go to Fredericksburg, as far as you know? A. It does not require that he be authorized from the Building Trades to go anywhere to look after his own trades. He goes out and looks the situation over and then reports to the Council the conditions that he finds. If



he finds a condition existing he may try to adjust the matter personally. If he is unsuccessful then he comes in and asks for the assistance of the Council.

Q. Did he do that in this case? A. He didn't, because he was killed on the way home from that job, but no doubt he would have made a report at 8 o'clock that night.

Q. The local union record would not be in the custody of the Council? A. No, we haven't got custody of that.

63 When these grievances, as we call them, are made, or complaints, where the business agent is unsuccessful in making any headway on the work and asks for the assistance of the Council, then we have a record of where he asks that.

Q. Where the local makes an investigation with the committee, that comes before the report is made to the Council; is that the customary way of handling it? A. Yes.

By Mr. Hoffman:

Q. On the night Mr. Lindsay was killed, did your Trades Council discuss the question of Mr. Lindsay's trip to Fredericksburg? A. We did not, any more than to say that Lindsay had gone to Fredericksburg, and he was absent at that meeting that night. That was something that had never occurred while he was business agent for the Lathers. He had always attended those meetings. At the time of the meeting we didn't know anything about the accident, and didn't know anything about it until the following morning. We were at a loss to understand why he was not present.

Q. Did you delay the meeting in any way for him to make a report? A. They are never delayed. They are called punctually at 8 o'clock.

By the Deputy Commissioner:

Q. Does the Council have the authority to instruct him where to go? A. As a committeeman, yes.

64 Q. They can give him instructions? A. They can instruct him, appoint him on a committee. The chairman of the Council, Mr. Diggs, will appoint a committee to investigate when a local business agent brings in a grievance.



Q. That has nothing to do with the appointment, but does this council have the right to instruct him what to do and give him instructions as to what work he does, if they want to give it to him? A. Not work relative to his own local union, but committee work for the Council. When he brings in his grievance and places it before the Council and the Council accepts his grievance, then it becomes the property of the Council and he is supposed to work along with who is appointed on the committee.

Q. Then, when it becomes a matter of the Council, they have the final instructions in telling him what to do? A. Yes, sir.

By Mr. Townsend:

Q. Was this a regular meeting of the Council or a specially called meeting? A. Regular; it meets every Tuesday night at 8 o'clock. That was a regular meeting.

65 Q. Was this on a Tuesday night? A. This was on a Tuesday night, yes.

Q. So that this report from Lindsay was one of the other matters that might come before the meeting? A. One of the many matters that would be brought before the meeting.

Mr. Townsend: I have nothing further.

Mr. Hoffman: I have nothing further. He may be excused.

By the Deputy Commissioner:

Q. Does the Council employ any help, Mr. Locher, or are they just members of the Council because they are the official members of the Council? A. That is right.

Q. They are not paid by the local union? A. That is right.

By Mr. Hoffman:

Q. Mr. Locher, you are on a salary? A. Yes, I am the only one.

By the Deputy Commissioner:

Q. You are the secretary? A. Yes, I am the secretary and really acting in the capacity as business agent. That is a part of my work for the Council.

Mr. Hoffman: Your position is permanent?

66 The Witness: My position is permanent.

By Mr. Townsend:

Q. Is it an elective position or by appointment? A. Elective.

Q. By whom? A. By the Council; by the delegates of the Council at the meeting in January.

Q. Was that an annual election? A. Yes.

Q. Who pays the salary of the Secretary? A. That is derived from a per capita tax per member of the local unions. The dues are paid in the form of a per capita tax, so much per member per union.

By the Deputy Commissioner:

Q. Then, do I understand when a man is elected as business agent from his own organization, the responsibility from that organization rests upon him to report under the instructions of the Council? A. That is correct. The locals of the International Union command them to be members of the Building Trades Council. That is compulsory.

Q. So that is really carried with the position when they are elected to it? A. That is right.

By Mr. Townsend:

67 Q. Do you know whether or not the local union, for instance this International Lathers' Union,—whether the local is a body incorporated under the District of Columbia laws, or an association? A. They are not incorporated.

Q. Do you know whether or not the International Union is? A. I couldn't give you that with certainty, but I think not.

Mr. Hoffman: Would you say it is a voluntary association?

The Witness: It is a voluntary association.

The Deputy Commissioner: Is that all, gentlemen?

Mr. Townsend: That is all.

(The witness was thereupon excused and retired from the witness stand.)



Thereupon **Frank T. Dean** was recalled as a witness for and on behalf of the Claimant and, having been previously duly sworn by the Deputy Commissioner, as above indicated, assumed the witness stand and, upon examination, testified further as follows:

Cross-examination.

By Mr. Townsend:

Q. Mr. Dean, the remuneration that is paid to the  
68 various officers, about which you have testified, the attendance at meetings, and so forth, is that by virtue of a vote of the Association? A. Well, it is more or less to keep them from working for nothing; that is, the organization don't want anything for nothing, and it is more or less a voluntary job, and they just pay them that much.

Q. I notice from the constitution, Section 3, page 6, "The officers of this Union to receive such salaries as the Union may from time to time adopt." By virtue of that, your compensation, and the compensation of these other officers is by a vote sometime appearing in the minutes? A. Yes. From time to time he may get his salary raised or lowered. Being a permanent secretary, he may have his salary raised.

Q. That is by vote of the union at the meetings? A. Yes, sir. It depends largely on the function of the organization.

Q. The Executive Committee can not vote so much salary? A. No.

Q. You could not, as business agent, say that the president shall receive so much? A. Oh, no.

Q. It must be by a vote of the entire union? A. Yes, sir.

69 Q. Has any officer in the union the authority, under these by-laws, to discharge you? A. No.

The Deputy Commissioner: There is a provision made for that.

The Witness (continuing): Other than by impeachment charge; that may be brought up by any member for discrimination or negligence of duty.

Q. You are entitled to a hearing on that, are you not? A. Yes.

Q. And by a vote of the union the office may be declared vacant? A. By a two-thirds majority of the union the office may be declared vacant.



Q. Mr. Dean, do you know what territory this Wood, Wire and Metal Lathers' Union covers? A. Halfway to the nearest local, in all directions.

Q. It would vary, depending upon where the next local was? A. Yes.

Q. If you had a local in Baltimore, it would be halfway between here and Baltimore? A. Yes, sir.

Q. And if there was no local in Baltimore and one in Philadelphia, it would be halfway from here to Philadelphia? A. That is right.

Mr. Hoffman: May I ask one question?

Mr. Townsend: Yes.

Mr. Hoffman: Was Fredericksburg within the jurisdiction of the local union?

The Witness: Yes.

By Mr. Townsend:

Q. Fredericksburg is a part of your territory, is it not? A. Yes.

Q. And the Lathers doing the work between here and Fredericksburg are a part of your union; the Lathers in that territory? A. Yes.

Q. That would not be part of the Richmond Union? A. No; if it was none of the members of our organization would be allowed to work there.

Q. Do you know anything about this building that he went down to look at; have you ever seen it? A. Yes, sir.

Q. What kind of a building is it? A. A five-story hotel.

Q. Do you know anything about the size of it, the dimensions? A. I think there are about 300 rooms.

71 Q. It is about five stories high and has about 300 rooms in it? A. Yes.

Q. Did any of the committee report, Mr. Dean? A. Yes.

Q. Do you know who it was reported? A. Yes.

Q. Who was it? A. Golding, Stearns and Mulloy.

Q. In the minutes read, there was a Mr. McDonald who went to visit this job on Monday. As I understand it they went on Tuesday. Now, is there any provision in those minutes requiring a certain day to visit the place? A. No. They were to visit the job at their pleasure, at any time they seen fit to go down there.

Q. It was purely within his discretion? A. Yes, sir.



Q. Do you recall when that committee was appointed; was it the same night or the next day? A. No, I don't.

Q. That was solely up to Mr. Lindsay? A. Yes.

Q. He could take anybody he wants to? A. Yes.

Mr. Townsend: That is all.

72 (The witness was thereupon excused and retired from the witness stand.)

Thereupon **Timothy A. Hill** was called as a witness for and on behalf of the Claimant and, having been previously duly sworn by the Deputy Commissioner, as above indicated, assumed the witness stand and, upon examination, testified as follows:

The Deputy Commissioner: What is your address?

The Witness: 228 Eleventh Street, Northeast.

The Deputy Commissioner: All right.

Direct examination.

By Mr. Hoffman:

Q. Are you connected with the Metal, Wire Lathers' International Union, Local No. 9? A. I am, sir.

Q. How long have you been connected with it? A. About seven years.

Q. Have you the records of the local union with you? A. What kind of records, sir?

Q. Showing payments of money. A. Yes, sir. I have the books right here.

Q. Do your records reveal what, if any, payments you have made to Mr. Opie F. Lindsay? A. The checks, the cancelled checks.

73 Q. What payments have you made to Mr. Lindsay for the year preceding December 15, 1931? A. The 1930 checks, you mean? These are all 1931 checks from January 5th, up to December 14th; and then here are some receipts signed by him because the funds were running short in the bank and we paid that in cash.

Q. Were these checks drawn by you? A. No, sir; by Brother Lindsay.

Q. Were they signed by you? A. They were signed by me as treasurer. I am also treasurer of the organization; been there for twenty-five years.



Mr. Hoffman: Without objection, I would like to offer them.

The Deputy Commissioner: I don't think there is any objection. He was paid \$80.00 a week.

Mr. Townsend: It was \$65.00 and \$15.00 expense. Is that it?

The Deputy Commissioner: Yes. How much a week did you pay Mr. Lindsay?

The Witness: Eighty dollars.

The Deputy Commissioner: What did that cover?

The Witness: I figured it was all salary.

The Deputy Commissioner: Does that include the expenses for a week?

74 The Witness: That includes the expenses. The previous business agent, he was always paid \$65.00 a week as salary, and \$15.00 a week for expenses.

The Deputy Commissioner: That is practically the basis on which Mr. Lindsay took the job?

The Witness: Yes. He got the same salary that Brother Hood did. He only got it when he worked. If there was a holiday that was deducted off his pay.

By Mr. Hoffman:

Q. I hand you some receipts and ask you to state what they are. A. These are receipts for money when our finances ran low in the bank; we didn't have the money in the bank, and as the money came in on Monday night I paid him that and he signed these receipts.

Q. Who? A. Mr. Lindsay. There is his signature; and here is one, here (indicating).

The Deputy Commissioner: I think that is immaterial. Just off the record.

(After conference off the record at the direction of the Deputy Commissioner.)

Mr. Hoffman: I won't go into that any further, then.

The Deputy Commissioner: All right.

By Mr. Hoffman:

75 Q. Do you have a record on your books of every payment you made to Mr. Lindsay? A. Yes, sir.



By the Deputy Commissioner:

Q. As Secretary of the Association, did you have to get authority from the Association to pay Mr. Lindsay, or was it just a regular established rate? A. The Secretary is authorized to pay all bills.

Q. Was this a regular monthly bill that you paid, without authorization? A. It was a weekly bill.

Q. A weekly bill? A. Yes.

Q. Without a specific authorization for it, each item? A. Yes.

Q. You would pay it under a general authorization, so much a week for the year? A. Yes; he would be paid a salary, whatever the organization authorized that he be paid. If his salary was reduced, I would have to follow out the instructions of the organization.

The Deputy Commissioner: Is that all?

Mr. Hoffman: That is all.

Cross-examination.

By Mr. Townsend:

76 Q. Did Mr. Lindsay perform duties as a member of the Council? A. Yes, sir.

Q. Do your books show the payment of salaries to any other officers? A. Yes; not specifically who they are. It just comes under the classification of officers. I might read you here the officers and the salary they get; that is, the President, the Recording Secretary, and Sargeant-at-Arms, and Executive Committee; they get fifty cents a night. The President gets fifty cents, the Recording Secretary gets fifty cents, the Sargeant-at-Arms fifty cents, and I get \$10.00 a week. Here it is (indicating). Here are the officers; the Secretary got \$11.50, the business agent, \$80.00, and the Executive Board, \$2.50; and the Building Trades Council gets fifty cents.

Q. That is the Building Trades Council? A. That is the delegates.

Q. I see.

By the Deputy Commissioner:

Q. Did you make a report at every meeting of that and was your report approved? A. It is approved. Sometimes



they don't call for it; other times they do. Sometimes, if they don't call for the expenses, I show the books, take the books there and they just let it go.

77 By Mr. Hoffman:

Q. Do you know anything about Mr. Lindsay's trip to Fredericksburg on December 15, 1931? A. I know nothing at all about this case. I was sick in bed at the time. I was taken sick about the latter part of October.

The Deputy Commissioner: Is that all, gentlemen?

Mr. Townsend: That is all.

(The witness was thereupon excused and retired from the witness stand.)

Thereupon **W. E. Stearn** was called as a witness for and on behalf of the Claimant and, having been previously duly sworn by the Deputy Commissioner, as above indicated, assumed the witness stand and, upon examination, testified as follows:

The Deputy Commissioner: You are W. E. Stearn; what is your address?

The Witness: 1502 Gale Street, Northeast.

The Deputy Commissioner: All right, Mr. Hoffman.

Direct examination.

By Mr. Hoffman:

Q. Were you acquainted with Opie F. Lindsay? A. Yes, sir.

78 Q. Did you have occasion to go with him on December 15, 1931 to Fredericksburg, Virginia? A.

Well, I went down that morning, Tuesday morning; he asked me to come and go along down there with him.

Q. Did you go? A. Yes, sir.

Q. Did you start back from Fredericksburg? A. Yes.

Q. Did you get all the way back to Washington?

The Deputy Commissioner: Just tell what happened on the way back.

The Witness: We started however and stopped; Mr. Walker wanted him to collect a bill from Mr. Lee for some work he had done; and coming back we got to Woodbridge and got hit with a truck.



The Deputy Commissioner: Then what happened?

The Witness: Then they carried me to the hospital at Quantico.

The Deputy Commissioner: Who all were in the car?

The Witness: Mr. Lindsay, Mr. Golding, Mr. McDonald, and Mr. Mulloy.

By Mr. Hoffman:

Q. Was that Arthur D. Mulloy? A. Yes, sir.

Q. And J. R. Golding? A. Yes, sir.

79 Q. What was the purpose of this trip to Fredericksburg? A. We went down there to investigate about two men working unfair to the local.

Q. Did you make an investigation? A. Yes, sir.

Q. Had you planned to make a report back to the local union that night, on your return? A. Yes, sir.

Q. When you went along with Mr. Lindsay, did you go as a member of his committee? A. Yes, sir. He asked us to go along.

Q. Did he appoint you as a member of his committee? A. Yes, sir.

Mr. Hoffman: That is all.

Cross-examination.

By Mr. Townsend:

Q. What time did you leave Fredericksburg? A. We left Fredericksburg about, I guess, around half past 2.

Mr. Hoffman: May I ask what time did you leave Washington to go down there?

The Witness: About 12 o'clock.

By Mr. Townsend:

Q. What time did you get down there? A. We got down there a little after 1 o'clock.

80 Q. Did Mr. Lindsay ask you that morning to go? A. Yes, sir.

Q. Did he just happen to see you on the street or did he call you up? A. I was going down to the local. He went down there and was waiting for another fellow to go with him, and we just met there and he asked me to go along with him.

Q. You left here about 12 o'clock and got down there about 1? A. Yes. He went first to the house, from the local.

Q. Did you see the two men you were looking for? A. Yes, sir.

Q. Five altogether went down? A. Five altogether went down.

Q. Did you know these two men? A. I just went down as a witness. Mr. McDonald knowed them because he worked with them in Chicago.

Q. You left Fredericksburg at what time, did you say? A. About 2 or 2:30.

Q. What time did the accident happen? A. About 6:30 that night, as far as I can remember.

Q. Where were you in between 2 and 6? A. We stopped at Mr. Walker's to get this bill; he asked us to stop by and collect it for Mr. Lee.

Q. Where does Mr. Walker live? A. Near Quantico.

Q. How long did you stay there? A. I guess about half an hour.

Q. What time did you get there; do you know? A. No, sir; I couldn't tell you that.

Q. Where did you go after that? A. We started home.

Q. Are you sure you stayed there a half an hour? What time did the accident happen? A. About 6:30.

Q. And you left Fredericksburg at 2 o'clock? A. Between 2 and half past, to the best of my knowledge; I didn't have a watch.

Q. You drove down in an hour, about an hour going down? A. It wasn't much more than an hour.

Q. Well, what I am trying to get at is, apparently you were four hours in getting back to Quantico, in other words, to Mr. Walker's place? A. No, sir; we stopped there along about the triangle.

Q. Where did this accident happen? A. On the hill at Woodbridge.

Q. How close is that to Fredericksburg? A. It is near Quantico.

Q. How close was that to the Triangle, to where Mr. Walker lived? A. About five or six miles, I should judge.



Q. Was it after dark when you left Mr. Walker's? A. It was just getting dark.

Q. Was it dark when the accident happened? A. It was only dark enough—you could see the road good.

Q. You came directly from Walker's to the place where the accident happened? A. Yes, sir.

Mr. Townsend: That is all.

Redirect examination.

By Mr. Hoffman:

Q. Are you a member of the Metal Lathers' International Union, No. 9, in good standing? A. No, not now.

Q. Were you at the time of this accident, on December 15, 1931? A. Yes, sir.

Mr. Hoffman: That is all.

Examination by the Deputy Commissioner:

Q. Did the business agent request you to go with him, or if the business agent requests you to go with him, is it a part of your duty as a member of the Council? A. I  
83 have to go with him if he requests me to go with him.

Q. He has that authority to take you? A. I think he has.

Q. You think he has? A. Yes, sir. That is his business.

Q. Well, when he asked you to go along with him, didn't you feel he had the authority to ask you? A. Yes, sir.

Q. Are you sure it was about 2 o'clock when you left Fredericksburg, or might it have been later? A. I couldn't tell you.

Q. If it took you an hour to go down, why did it take you about four hours to come back as far as the accident? A. We stopped at Mr. Walker's.

Q. You said you only stopped there about a half an hour? A. About a half an hour, I stated.

Q. That would make it three and a half hours before you were hurt; what were you doing the rest of the time? You said you were only an hour in driving down, and you were three and a half hours to get back to where you were hurt. A. That is about what I figure it, about that time.

Q. You are just figuring it that way? A. Yes, sir.

84 Q. You don't know exactly what hour it was? A. No, sir; I couldn't say.

By Mr. Hoffman:

Q. Do you know how far it is from here to Fredericksburg, Virginia? A. It is about forty some miles.

By the Deputy Commissioner:

Q. You didn't have any watch with you? A. No, sir.

Q. Did you look at the clock to see when you started back? A. No, sir.

Q. Then, you are just guessing at the time? A. Yes, just guessing.

By Mr. Hoffman:

Q. As I understand it, it is just a mere guess on your part as to the time it took you to come back? A. Yes, sir.

Mr. Hoffman: That is all.

Cross-examination.

By Mr. Townsend:

Q. Did you see the two men down there at lunch, while you were eating lunch? A. They had done eaten; they were at work.

85 Q. Did you talk with them? A. I didn't speak to them.

Q. Did anybody talk to them? A. Mr. Golding and Mr. Lindsay and Mr. McDonald.

Q. You just stood around? A. Yes, sir, just as a witness, that I was there.

Q. Did you start right back from Fredericksburg after he saw these men? A. In about ten minutes. We walked around and looked the building over.

Q. Was it daylight when you got to Mr. Walker's house? A. Yes, sir.

Mr. Hoffman: Did the union pay you for making this trip? The Witness: Yes, sir.

By Mr. Townsend:

Q. You said you stopped at Walker's to collect a bill? A. No, sir; Mr. Walker gave us a bill to collect for him for wages from Mr. Lee.



Q. Did you meet him down in Fredericksburg at first?

A. No; we met him at the Triangle, stopped by there, and he asked us to collect this bill that he had in Washington.

Q. How did you know he wanted it collected; did you know that? A. No, we didn't. He wanted him to come by and get a dog for his baby; he told him to come by  
86 and he would give it to him.

Q. Who said that? A. Mr. Walker told Mr. Lindsay.

Q. And Mr. Lindsay stopped to get the puppy. A. Yes, sir.

Q. And while he was there, Mr. Walker asked Mr. Lindsay to collect this bill? A. Yes, sir; but the puppy was too young to take away from its mother.

Q. That is what he said? A. Yes, sir.

Mr. Townsend: Who is Mr. Walker?

The Witness: Mr. Dean can tell you.

Mr. Dean: If I may interrupt, I will tell you. Mr. Walker was a contractor and employer of our men.

Mr. Townsend: I think that is all.

The Deputy Commissioner: Is it customary for the business agent when on a duty of this kind to take a committee with him on special work?

The Witness: If it is anything like outside people on the job and union men working on it.

The Deputy Commissioner: For the purpose of levying fines against union men, you take a committee along who can establish that fact?

The Witness: Yes; you have witnesses against  
87 them if they are working on the job that way.

The Deputy Commissioner: Is that method usual and regular?

The Witness: Yes, sir.

Mr. Hoffman: Why did you go along?

The Witness: Just as a witness. We didn't know them. They were out of town men, but this man went down. He was the man who worked with them in Chicago.

Mr. Hoffman: That is all.

(The witness was thereupon excused and retired from the witness stand.)

Thereupon **James R. Golding** was called as a witness for and on behalf of the Claimant and, having been previously



duly sworn by the Deputy Commissioner, as above indicated, assumed the witness stand and, upon examination, testified as follows:

Examination by the Deputy Commissioner:

Q. What is your address, Mr. Golding? A. 703 Ninth Street, Northeast.

The Deputy Commissioner: Now, what is this witness going to testify to?

Mr. Hoffman: The same as the others, and so will Mr. Mulloy. We might stipulate that, if it is agreeable.

88 Mr. Townsend: You might ask him as to the time.

Direct examination.

By Mr. Hoffman:

Q. Did you have occasion to go with Mr. Opie F. Lindsay on a trip to Fredericksburg, Virginia, on December 15, 1931? A. Yes, sir.

Q. What was the purpose of your trip with him? A. For an investigation, investigating a job and looking after some of our members who were working on the job.

Q. Who appointed you as a member of the committee to go along? A. Mr. Lindsay.

The Deputy Commissioner: What time did you start from here to go to Fredericksburg?

The Witness: As nearly as I can recollect, Mr. Lindsay came by the house for me around 8:30.

The Deputy Commissioner: In the morning?

The Witness: Yes, sir.

The Deputy Commissioner: What time did you get to Fredericksburg?

The Witness: Well, I couldn't be exact; sometime in the forenoon; around the forenoon.

The Deputy Commissioner: How long did you stay in Fredericksburg?

89 The Witness: I couldn't say. We were there quite a little while, because Mr. McDonald was the only man who knew the two brothers that was on the job, and we had quite a little time getting in there to see them



and finally was chased off the job. I couldn't say how long we stayed there.

The Deputy Commissioner: What time did you start back?

The Witness: I would say around 2 o'clock, 2:30 or 3. I am not positive.

The Deputy Commissioner: Is that all?

Cross-examination.

By Mr. Townsend:

Q. What time did the accident happen? A. I couldn't say.

Q. Was it after dark or before dark? A. It was around 6 o'clock at the time the accident occurred.

Q. Did you stop at any place after you left Fredericksburg? A. Yes, sir. We came back by Mr. Walker's.

Q. Do you know approximately how long you stayed there? A. Well, he called his wife from Mr. Walker's and told her that he would be getting late in home.

Q. Who did that? A. Mr. Lindsay. Mr. Lindsay  
90 stopped by there and got a bill to collect for Mr. Walker.

Q. Do you know anything about him stopping to get a puppy, a dog? A. No, I don't.

Q. You don't know anything about that? A. I don't know anything about that.

Mr. Townsend: That is all.

(The witness was thereupon excused and retired from the witness stand.)

Thereupon **Arthur D. Mulloy** was called as a witness for and on behalf of the Claimant and, having been previously duly sworn by the Deputy Commissioner as above indicated assumed the witness stand and, upon examination, testified as follows:

The Deputy Commissioner: Give your full name and address.

The Witness: Arthur D. Mulloy; Riverdale, Maryland.

The Deputy Commissioner: All right.



## Direct examination.

By Mr. Hoffman:

Q. Were you on December 15, 1931, a member of the Metal Lathers' International Local Union, No. 9? A. I was.

Q. Were you appointed by Mr. Lindsay as a member of his committee to go to Fredericksburg, Virginia? A. 91 Yes, sir.

Q. Did you go down there? A. I did.

Q. What time did you leave in the morning? A. I couldn't say, because we had to go on a couple of jobs before we started down there. I don't know what time it was we left. It was early in the morning, because I met him down in front of the hall.

Q. What time did you arrive in Fredericksburg? A. I couldn't say. It must have been around 3 o'clock, because we was held up on the road with an accident; one of the trucks went down an embankment there.

Q. What time did you leave Fredericksburg for Washington on your return trip? A. I couldn't say exactly what time it was. I haven't any idea about what time it was.

Q. Do you know what time the accident occurred on your way back? A. It was around about dusk.

Q. Did you make any stops on the way back prior to the accident? A. He had a bill in his pocket he was to collect for Mr. Walker. He had the bill in his pocket at the time.

Q. What was your duty in going along as a mem- 92 ber of the committee? A. I was supposed—I went down to help try to catch these fellows if they could be found. We went down to corral the job so that they didn't get out and hide on us while down there looking over the job.

Mr. Hoffman: That is all.

## Cross-examination.

By Mr. Townsend:

Q. Did you know the men? A. I didn't know them.

Q. Did you locate them down there? A. Yes, sir.

Q. What were those other two jobs that you went on in the morning? A. I think one was the ice cream factory; it was down in there somewhere.



Q. Who was on that committee? A. We was all in there together; we was in the car together.

Q. What time did you get to the job? A. I guess it must have been around 9 o'clock. I met him at 8 o'clock at the hall.

Q. Some five of you went down there? A. Yes, sir; we went down in the car.

Q. When were you appointed by Mr. Lindsay? A. Early in the morning.

93 Q. Was it the same day? A. Yes, sir.

Q. Did he come to your house? A. No. I was supposed to go to Alexandria. I went by the hall and met him at the hall.

Q. And then he appointed you on that committee? A. Yes, sir.

Q. Were you working at the time? A. I wasn't, but I was working at Alexandria on the Washington Memorial.

Q. Do you know whether these other men were working at that time, Mr. Golding, Mr. McDonald, and Mr. Stearn? A. I don't know whether they were employed or not.

Q. Do you know anything about Mr. Lindsay stopping at Mr. Walker's for a dog, a puppy dog? A. That is when he gave him that bill for him to collect for some wages.

Q. Mr. Walker gave him the bill there? A. Yes; he gave him the bill.

Q. Mr. Walker gave it to Mr. Lindsay? A. Yes.

Q. That was before the accident? A. Yes, sir, before the accident.

Q. Now I want to know whether you know anything about him stopping there for a dog? A. Yes; he  
94 stopped there for a dog for his little child.

Mr. Townsend: That is all.

By the Deputy Commissioner:

Q. Was the accident on the regular highway leading from Fredericksburg to Washington? A. Yes, sir; this side of the Triangle.

Q. That is the road you had to go over and on which you stopped to see this man? A. Yes, sir.

The Deputy Commissioner: Anything further, Mr. Hoffman?

Mr. Hoffman: Nothing.

Mr. Townsend: I haven't anything further.

(The witness was thereupon excused and retired from the witness stand.)

The Deputy Commissioner: Is that your case?

Mr. Hoffman: That is our case.

The Deputy Commissioner: All right, Mr. Townsend, have you any witnesses?

Mr. Townsend: We will call Mr. Lee.

Thereupon **Harry Lee** was called as a witness for and on behalf of the Respondent and, having been previously duly sworn by the Deputy Commissioner, as above indicated, assumed the witness stand and, upon examination,  
95      tion, testified as follows:

Examination by the Deputy Commissioner:

Q. You are Harry Lee? A. Yes, sir.

Q. What is your address, Mr. Lee? A. 115 Tenth Street, Northeast.

The Deputy Commissioner: All right, Mr. Townsend.

Examination (continued).

By Mr. Hoffman:

Q. Are you a member of the Metal Lathers' Local No. 9?  
A. Yes.

Q. Your position is what? A. Secretary of the Executive Board.

Q. I hand you here some records of the Executive Board and ask you if you can identify them? A. I was not a member of the Board at this time.

By the Deputy Commissioner:

Q. He has just handed you some records. A. These are Executive Board records here.

Q. Are they the records of the actions of the Board? A. They are the actions of the Executive Board.

Q. They are the minutes of the meetings? A. They are the minutes of the meetings of the Executive Board.

96      Q. You identify them as those records? A. Yes.



Q. Did you write that record? A. No, sir, not this.

Q. As secretary. A. I was not secretary at that time. Mr. Dean was secretary.

Q. You are now? A. Yes sir.

Q. When were you elected? A. In December.

Mr. Herbert: I think the minutes have already been read into the record. That is all.

The Deputy Commissioner: Is that your case Mr. Herbert?

Mr. Herbert: Yes. The records are already in, and the by-laws.

The Deputy Commissioner: Then, is that the case?

Mr. Herbert: That is our case.

(The witness was thereupon excused and retired from the witness stand.)

Mr. Townsend: We would like to raise a question of law and would like permission to file a brief.

The Deputy Commissioner: You want to file a brief, do you?

Mr. Townsend: Yes.

97 The Deputy Commissioner: How long do you want?

Mr. Townsend: Two weeks.

The Deputy Commissioner: I only have twenty days, in which to make a report, and I can not — fourteen of that. Can't you do it in a week?

Mr. Townsend: I think so.

The Deputy Commissioner: Then, file a copy of it in this office and give a copy to Mr. Hoffman.

Mr. Hoffman, do you want to make a reply?

Mr. Hoffman: Yes, I would like to file a reply.

The Deputy Commissioner: How much time do you want?

Mr. Hoffman: A week.

The Deputy Commissioner: All right.

The hearing is concluded.

(Thereupon the instant hearing was concluded at 12 o'clock noon.)

I hereby certify that the foregoing is a complete and accurate transcript of the shorthand report of the proceed-

ings had and testimony presented at the described hearing, made by Oliver P. Stewart, a competent shorthand reporter, and a member of my staff.

H. S. MIDDLEMISS,  
*Official Reporter.*

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CLAIMANT'S EXHIBIT No. 1.

Form DCCA-362.

District of Columbia Workmen's Compensation Act, Office  
of Deputy Commissioner, Washington, D. C.

Leave this space blank. Case No.: 1915-4. Insurance  
Carrier's No.: 11.

*Claim for Compensation in Death Case by Widow and/or  
Children under the Age of Eighteen.*

I hereby make claim for compensation arising out of the death of Opie F. Lindsay, who died on Dec. 15, 1931, at Woodbridge, Va., as a result of injury sustained on Dec. 15th, 1931, at Woodbridge, Va., in the employ of Wood, Wire & Metal Lathers Int. Union, whose address is Washington, D. C. Deceased left the following children who were under 18 years of age at the time of his death:

| Names.             | Date of birth. |
|--------------------|----------------|
| Jack Lindsay.....  | Aug. 8th, 1923 |
| Mary Lindsay ..... | Dec. 24, 1929  |

These questions should be answered where the widow is claiming compensation:

Widow was born on (Date) Jan. 19th, 1888, at (Place) Wash., D. C.

Widow was married to the deceased on Sept. 12th, 1918, at (Place where married) Wash., D. C., by (Name or title of person performing ceremony) Rev. John H. Eckenrode.

Last physician or hospital: (Name and address) Killed instantly.

Name of undertaker: Herbert B. Nevius, Address: 924 N. Y. Ave. N. W.

Amount of undertaker's bill: \$297.00. Amount paid, if any: \$297.00.



By whom paid: (Name) Wood, Wire and Metal Lathers  
Int. Union, (Address) Wash., D. C.

(Signature of claimant:)

Mrs. CLARA A. LINDSAY,

Address: 5014 9th St. N. W., Wash., D. C.

Dated this 27th day of January, 1931.

*Affidavit.*

DISTRICT OF COLUMBIA,

*County of Washington, ss:*

On this 27th day of January, A. D. 1932, personally appeared before me the above-named Mrs. Clara A. Lindsay and made oath that the answers by John H. Eckenrode above named and subscribed are true.

[SEAL.]

H. F. MANDLER,

*Notary Public.*

Address: 927 N. Y. Ave. N. W., Wash., D. C.

99

PLAINTIFF'S EXHIBIT No. 2.

Equity. No. 54345. Case No. 1915-4.

United States Employees' Compensation Commission,  
District of Columbia Compensation District.

In the Matter of the Claim for Compensation under the  
District of Columbia Workmen's Compensation Act.

Mrs. CLARA A. LINDSAY, Claimant,

vs.

LATHERS INTERNATIONAL UNION LOCAL No. 9, Employer;  
Standard Accident Insurance Company, Insurance  
Carrier.

*Compensation Order—Award of Compensation.*

Such investigation in respect to the above-entitled claim having been made as is considered necessary, and a hearing having been duly held in conformity with law, the Deputy Commissioner makes the following



## Findings of Fact.

That on the fifteenth day of December, 1931, Opie F. Lindsay, hereinafter known as "employee", was in the employ of the employer above named, whose address is 228 11th Street, N. E., Washington, District of Columbia; that the employer was subject to the provisions of an Act of Congress approved May 17, 1928, entitled "An Act to provide compensation for disability or death resulting from injury to employees in certain employments in the District of Columbia and for other purposes"; that the liability of the employer for compensation under said Act was insured by the Standard Accident Insurance Company; that on said day the employee herein, while in the employ of the employer above named as a business agent, sustained  
100 personal injury which arose out of and occurred in the course of his employment and resulted in his death; that while so employed as a business agent of the Lathers International Union Local No. 9, through the provisions of the Constitution and By-Laws of said Union, said business agent became a member of the Washington Building Trades Council of the City of Washington and vicinity; that the duties of the business agent required him, among other things, to investigate questions of violations of Union rules by Union men and make investigations with respect to Non-Union employment and other matters pertaining to organized labor activities in the Union district of which Fredericksburg, Virginia, is a part; that a part of the employee's duties required him to make investigations on building projects and other places where members of the Union were employed, and in performance of that duty, he was required to go to Fredericksburg, Virginia, on December 15, 1931, with a committee to investigate charges, which had been brought to the attention of the Union, against employees who were working in violation of Union rules; that while in the performance of this duty, and after having made the investigation and en route returning to Washington, the automobile in which he and others were riding was struck by a passing automobile, causing injuries to the employee herein as well as to the other passengers in the car; that as a result of the injuries sustained in this collision, the employee died on the same day; that said injury and death arose out of and occurred in the course of the em-



ployee's employment while performing the duties required of him as a business agent of the said Union; that the employer had due notice of injury; that the wage of  
101 the employee at the time of the injury was \$80.00 per week, and the average weekly wage was in excess of \$37.50 per week, the maximum provided in the Act upon which compensation may be based; that Clara A. Lindsay, who was born January 19, 1888, is the surviving wife of the deceased employee above named, and as such she is entitled to compensation at the rate of \$13.13 per week; that Jack Lindsay, born August 8, 1923, and Mary Lindsay, born December 24, 1929, are the surviving children of the deceased employee, and as such are entitled to compensation at the rate of \$3.75 per week each, which compensation is payable to Clara W. Lindsay, claimant herein, as mother and natural guardian of the said children; that the claimant herein is entitled to compensation in her own behalf as surviving wife and in behalf of the two surviving children of the deceased employee in the amount of \$20.63 per week; that compensation from December 15, 1931, to May 2, 1932, both dates inclusive, a period of 20 weeks, at the rate of \$20.63 per week, amounting to \$412.60, is due and payable; that H. Nevius, Undertaker of 924 New York Avenue, N. W., Washington, D. C., rendered burial services in behalf of the deceased employee, and the bill for said services is in excess of \$200.00; that Attorney Frank B. Hoffman rendered legal services in behalf of the claimant herein, and for such services his fee is approved as reasonable in the amount of \$200.00.

Upon the foregoing findings of fact, the Deputy Commissioner makes the following

#### Award.

That the employer, Lathers International Union  
102 Local No. 9, and the insurance carrier, Standard Accident Insurance Company, shall pay to the claimant herein compensation in her own behalf and in behalf of Jack Lindsay and Mary Lindsay, surviving children of the deceased employee, from December 15, 1931, to May 2, 1932, both dates inclusive, a period of 20 weeks, at the rate of \$20.63 per week, amounting to \$412.60, which amount is due



and shall be paid forthwith; shall continue to pay compensation to the claimant in her own behalf and in behalf of the two surviving children of the deceased employee at the rate of \$20.63 per week, payable every two weeks, until further order of the Deputy Commissioner; shall pay to H. B. Nevius, Undertaker, for burial services rendered in behalf of the deceased employee the sum of \$200.00; and shall pay to Attorney Frank B. Hoffman for legal services rendered in behalf of the claimant the sum of \$200.00, which amount shall constitute a lien upon and shall be paid out of the unpaid installments of compensation to which the claimant is entitled.

Given under my hand, at Washington, D. C., this ninth day of May, 1932.

R. J. HOAGE,  
*Deputy Commissioner, District of  
Columbia Compensation District.*

*Motion for Injunction Pendente Lite.*

Filed May 13, 1932.

\* \* \* \* \*

Now comes the plaintiff, Standard Accident Insurance Company, and moves this Honorable Court to issue an injunction pendente lite, as prayed in the Bill of Complaint filed in the above entitled case, enjoining the defendants, Robert J. Hoage, Deputy Commissioner, and Clara A. Lindsay, from enforcing or attempting to enforce the award of compensation entered on May 9, 1932, in the matter of the claim of Clara A. Lindsay against Lathers International Union, Local No. 9, and Standard Accident Insurance Company, pending the decision of this Court upon the Bill of Complaint filed herein.

BRASHEARS & TOWNSEND,  
By WILSON L. TOWNSEND,  
*Attorneys for Plaintiff.*

Mr. Robert J. Hoage,  
Deputy Commissioner,  
Investment Building:  
Mrs. Clara A. Lindsay,  
5014 9th Street N. W.:

Please take notice that the above motion for an injunction pendente lite will be presented to the Justice of the Supreme



Court of the District of Columbia holding motions court on Wednesday, May 18, 1932, at ten o'clock A. M., or as soon thereafter as counsel can be heard.

BRASHEARS & TOWNSEND,  
By WILSON L. TOWNSEND,  
*Attorneys for Plaintiff.*

*Marshal's Return.*

Served a copy of the within above motion on Mr. Robert J. Hoage, Deputy Commissioner, Personally 5/16/32; Clara A. Lindsay personally 5/16/32.

EDGAR C. SNYDER,  
*U. S. Marshal in and for  
the Dist. of Columbia,*  
By ROBERTS & CLAPPER,  
*Deputy U. S. Marshals.*

K.

104 *Motion to Dismiss Bill for Injunction.*

Filed June 3, 1932.

\* \* \* \* \*

Now come the defendants, Robert J. Hoage, deputy commissioner, United States Employees' Compensation Commission, and Clara A. Lindsay, by their attorneys, and move this honorable court to dismiss the bill for injunction filed herein for the following reasons, to wit:

1. That the bill does not entitle the plaintiff to any relief at law or in equity.

2. That under the provisions of the Longshoremen's and Harbor Workers' Compensation Act (U. S. C. Title 33, Chapt. 18) as made applicable to the District of Columbia by the Act of May 17, 1928 (D. C. Code, Title 19, Chapt. 2), the defendant Hoage had jurisdiction to award compensation to Clara A. Lindsay, Jack Lindsay and Mary Lindsay, respectively, widow and minor children of Opie F. Lindsay, the employee, who died as a result of injuries sustained December 15, 1931.

3. That as a matter of law the bill and exhibits annexed thereto show that Opie F. Lindsay was an employee of the Lathers' International Union Local No. 9, and that the said union was the employer of the said Lindsay within the mean-

ing of section 1 of the Act of May 17, 1928 (D. C. Code, Title 19, Chapt. 2, Sec. 11).

4. That the compensation order, award of compensation, filed by the defendant Hoage on May 9, 1932, annexed to the bill as an exhibit, is in accordance with law.

105 5. For such other good and sufficient reasons as may be shown.

LEO A. ROVER,

*United States Attorney;*

JOHN J. WILSON,

*Assistant United States Attorney,*

*Attorneys for R. J. Hoage, Deputy  
Commissioner, United States Em-  
ployees' Compensation Commis-  
sion, Defendant.*

FRANK B. HOFFMAN,

*Attorney for Clara A. Lindsay, Defendant.  
W.*

*Notice.*

\* \* \* \* \*

Please take notice that the points to be submitted in support of this motion, and the authorities intended to be used are attached hereto. The rules of the above entitled court require that if you oppose the granting of the above motion, you, or your counsel, shall within five days from the date of service of a copy of this motion upon you, or such further time as the said court may grant, or as the parties to this suit may agree upon, file in reply with the clerk of said court, a statement of the points and authorities upon which you rely, and serve a copy thereof upon counsel for the defendants.

LEO A. ROVER,

*United States Attorney;*

JOHN J. WILSON,

*Assistant United States Attorney,*

*Attorneys for R. J. Hoage, Deputy  
Commissioner, United States Em-  
ployees' Compensation Commis-  
sion, Defendant.*

FRANK B. HOFFMAN,

*Attorney for Clara A. Lindsay, Defendant.  
W.*



106

*Memorandum.*

Filed June 27, 1932.

\* \* \* \* \*

While this case is not free from doubt I am of the opinion that at the time the deceased sustained the injury from which he died he was an employe of the Lathers' Local Union No. 9 and that said Union was an employer carrying on an employment in the District of Columbia. It follows that the motion to dismiss should be granted.

Plaintiff's motion for an injunction pendente lite is also necessarily denied.

June 27, 1932.

JESSE C. ADKINS,  
*Justice.*

*Final Decree Dismissing Bill of Complaint.*

Filed June 30, 1932.

\* \* \* \* \*

This cause coming on to be heard upon the plaintiff's motion for an injunction pendente lite, and upon the motion of the defendants to dismiss the bill of complaint, and having been argued by counsel and also considered by the Court upon the briefs of the respective parties, it is, by the Court, this 30th day of June, A. D., 1932,

Adjudged, ordered, and decreed that the motion of the plaintiff for an injunction pendente lite be and the same is hereby denied; and it is

Further adjudged, ordered, and decreed that the motion of the defendants to dismiss the bill of complaint be and the same is hereby granted, and that the said bill of complaint be and the same is hereby dismissed; and it is

Further adjudged, ordered, and decreed that there shall be paid to Frank B. Hoffman, Attorney for the defendant, Clara A. Lindsay, the sum of Two Hundred and Fifty Dollars (\$250.00), as an attorney's fee for services rendered to the said defendant, which amount shall be in addition to the fee allowed by the Deputy Commissioner and shall constitute a lien upon and be paid out of the unpaid installments of compensation due said defendant.

JESSE C. ADKINS,  
*Justice.*



The plaintiff in open court notes an appeal to the Court of Appeals of the District of Columbia, and the penalty of the bond for costs on appeal is fixed at \$100.00 or \$50.00 cash deposit.

JESSE C. ADKINS,  
*Justice.*

*Memorandum.*

July 16, 1932.—\$50 deposited by Plaintiff in lieu of bond on appeal.

*Assignments of Error.*

Filed July 23, 1932.

\* \* \* \* \*

The plaintiff, Standard Accident Insurance Company, a corporation, having duly noted in open Court an appeal from the decree entered in the above entitled cause  
108 on the 30th day of June, 1932, assigns the following errors in the record and proceedings in said cause:

1. The Court erred in dismissing the Bill of Complaint.

2. The Court erred in thereby holding that the Lathers International Union, Local No. 9 was a person carrying on employment within the District of Columbia within the meaning of the Longshoremen's and Harbor Workers' Compensation Act, approved March 4, 1927, (U. S. Code, Title 33, Chapter 18) as made applicable to the District of Columbia by Act of Congress approved May 17, 1928 (D. C. Code, Title 19, Chapter 2), and that the said Lathers Union was subject to the provisions of the said Compensation Act.

3. The Court erred in thereby holding that Oppie F. Lindsay was an employee of the said Lathers International Union, Local No. 9, and that the relation of master and servant existed between the said Lindsay and the said Lathers Union.

4. The Court erred in thereby holding that the defendant, Robert J. Hoage, Deputy Commissioner, had jurisdiction to enter the award described in said Bill, and that said award was in accordance with law.

5. The Court erred in denying the motion of the  
109 plaintiff for an injunction pendente lite.

BRASHEARS & TOWNSEND,  
By WILSON L. TOWNSEND,  
ALBERT F. BEASLEY,

*Attorneys for Plaintiff.*



Service of the foregoing Assignments of Error, with receipt of a copy thereof, acknowledged this 23rd day of July, 1932.

LEO A. ROVER,  
*U. S. Attorney for D. C.;*  
 JOHN J. WILSON,  
*Asst. U. S. Attorney for D. C.,*  
*Attys. for Defendant Robt. J. Hoage.*  
 F. B. HOFFMAN,  
*Atty. for Clara A. Lindsay.*

*Designation of Record.*

Filed July 23, 1932.

\* \* \* \* \*

The Clerk of the Court will please prepare transcript of record on appeal in the above entitled cause and include therein the following:

1. The Bill of Complaint, and all accompanying exhibits.
2. Motion for Injunction Pendente Lite.
3. Defendants' motion to dismiss Bill for Injunction.
4. Memorandum Opinion filed by Justice Adkins, June 27, 1932.
- 110 5. Final Decree dismissing Bill of Complaint, with notation of appeal, June 30th, 1932.
6. Deposit of \$50.00 in lieu of undertaking for costs on appeal July 16, 1932.
7. Assignments of Error.
8. This Designation.

BRASHEARS & TOWNSEND,  
 By WILSON L. TOWNSEND,  
 ALBERT F. BEASLEY,  
*Attorneys for Plaintiff.*

Service of the foregoing Designation, with receipt of a copy thereof, acknowledged this 23rd day of July, 1932.

LEO. A. ROVER,  
*U. S. Attorney for D. C.;*  
 JOHN J. WILSON,  
*Asst. U. S. Attorney for D. C.,*  
*Attys. for Defendant, R. J. Hoage.*  
 F. B. HOFFMAN,  
*Atty. for Clara A. Lindsay.*  
 J. J. W.

## 111 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,  
*District of Columbia, ss:*

I, Frank E. Cunningham, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 110, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 54345 in Equity, wherein Standard Accident Insurance Company, a corporation, is Plaintiff and Robert J. Hoage, Deputy Commissioner, &c. et al, are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 17th day of September, 1932.

[Seal Supreme Court of the District of Columbia.]

FRANK E. CUNNINGHAM,  
*Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 5787. Standard Accident Insurance Company, a Corporation, appellant, vs. Robert J. Hoage, Deputy Commissioner, United States Employees' Compensation Commission, and Clara A. Lindsay. Court of Appeals, District of Columbia. Filed Sep. 20, 1932. Henry W. Hodges, Clerk.



NOV 29 1932

*Henry H. Hodges*

CLERK

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IN THE  
**Court of Appeals, District of Columbia**  
OCTOBER TERM, 1932.

---

No. 5787

---

STANDARD ACCIDENT INSURANCE COMPANY,  
(a corporation), *Appellant*,

vs.

ROBERT J. HOAGE, Deputy Commissioner United States  
Employees' Compensation Commission, and  
CLARA A. LINDSAY,  
*Appellees*.

---

**BRIEF FOR APPELLANT.**

---

EDWARD S. BRASHEARS,  
WILSON L. TOWNSEND,  
ALBERT F. BEASLEY,  
*Attorneys for Appellant,*  
1107 Barr Building.





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IN THE  
**Court of Appeals, District of Columbia**

OCTOBER TERM, 1932.

---

No. 5787

---

STANDARD ACCIDENT INSURANCE COMPANY,  
(a corporation), *Appellant*,

vs.

ROBERT J. HOAGE, Deputy Commissioner United States  
Employees' Compensation Commission, and  
CLARA A. LINDSAY,  
*Appellees.*

---

**BRIEF FOR APPELLANT.**

---

This is an appeal from a decree of the Supreme Court of the District of Columbia dismissing a bill in equity filed by the Standard Accident Insurance Company to enjoin the enforcement of a compensation award made by Deputy Commissioner Hoage in favor



of Clara A. Lindsay, widow of Opie F. Lindsay, business agent of Lathers International Union, Local No. 9, on account of the death of Lindsay from injuries sustained while driving his automobile from Fredericksburg to Washington. The automobile was in collision with a truck on December 15, 1931, on the highway near Quantico, Virginia.

### **QUESTION INVOLVED.**

The facts are undisputed, and this Court is asked to decide whether or not the Supreme Court of the District of Columbia erred in dismissing the Bill of Complaint and in thereby holding that the Lathers International Union, Local No. 9, was a person carrying on employment within the District of Columbia, and subject to the provisions of the Longshoremen's and Harbor Worker's Compensation Act approved March 4, 1927, and made applicable to the District of Columbia by Act of Congress approved May 17, 1928; and thereby holding that Opie F. Lindsay was an employee of the Lathers International Union, Local No. 9, and that the relation of master and servant existed between Lindsay and the Lathers Union, and consequently that the Deputy Commissioner had jurisdiction to enter an award.

### **PLEADINGS.**

The Bill for an Injunction filed by the plaintiff alleged that the plaintiff was the insurance carrier for Lathers International Union, Local No. 9, of which Opie F. Lindsay was a member and an officer at the time of his death on December 15, 1931; that the defendant, Clara A. Lindsay, made claim for compensation, pursuant to which a hearing was had before the

Deputy Commissioner at which the plaintiff denied that the Union was an employer within the provisions of the Act, that Lindsay was an employee within the provisions of the Act and that Lindsay sustained an injury in the course of any employment within the Act; that testimony was taken and reduced to writing, a transcript of which testimony being attached to the Bill. (R. 2-3)

The Bill then recites that on May 9, 1932, the Deputy Commissioner made an award of compensation to Clara A. Lindsay ordering the Lathers International Union, Local No. 9, and the Standard Accident Insurance Company to pay to her compensation for herself and two children at the rate of \$20.63 per week, together with funeral expenses. The Bill further alleges that said award was based upon certain findings of fact that were attached to the award, which findings of fact and the award were attached to the Bill as an exhibit. The plaintiff further alleged in the Bill that the findings of fact as to the status of the Lathers International Union, Local No. 9, as an employer, and as to the status of Lindsay as an employee, and as to the sustaining of an injury by Lindsay in the course of employment are not supported by the testimony and that the Deputy Commissioner was without authority in law to enter an award against the plaintiff because of lack of jurisdiction; that the findings of fact were contrary to the evidence, and that it appears from the testimony that the Lathers International Union, Local No. 9, was an unincorporated voluntary association organized for the mutual welfare and protection of its members, not engaged in any business, trade, occupation or profession in the District of Columbia, and that Lindsay was a member of the Union. (R. 3-4)



The testimony taken before the Deputy Commissioner filed as an exhibit appears in the Record at pages 7 to 72.

### **MOTION TO DISMISS BILL.**

The defendants Robert J. Hoage and Clara A. Lindsay thereupon filed a motion to dismiss the bill of complaint (R. 76-77) and, after submission on memorandum, such motion was sustained. (R. 78)

### **FINAL DECREE.**

Final decree dismissing the bill was filed June 30, 1932 (R. 78) and from this decree this appeal was perfected. (R. 79)

### **MOTION TO STAY PAYMENTS.**

With the Bill of Complaint the plaintiff prayed for an injunction pendente lite but such motion was denied. (R. 78) A similar petition was filed in this Court pending the docketing of the appeal, which petition was denied.

### **STATEMENT OF FACTS.**

The transcript of testimony taken at the hearing before the Deputy Commissioner appears in the Record as plaintiff's exhibit No. 1 to the Bill of Complaint. The witnesses testifying were the three members of the Union who were with Lindsay at the time of the accident, namely, W. E. Stearns, J. R. Golding and Arthur D. Mulloy, and two officers of the Union, namely, Frank T. Dean, the business agent who succeeded Lindsay, and Timothy A. Hill, the secretary. Mr. John Locher, Secretary of the Washington Building Trades Council, also testified.

## **THE ACCIDENT.**

Stearns testified that on the morning of December 15, 1931, Lindsay asked him to go to Fredericksburg and on the way back near Woodbridge they were struck by a truck. (R. 59)

Golding testified that he was asked by Lindsay to go to Fredericksburg on a committee and the accident occurred about 6 P.M. (R. 65-66)

Mulloy testified that he was appointed a member of the committee by Lindsay to go to Fredericksburg and that the accident occurred on the highway from Fredericksburg to Washington. (R. 67-68)

It was admitted at the hearing before the Deputy Commissioner that Opie F. Lindsay sustained an injury resulting in his death. (R. 10)

## **STATUS OF THE LATHERS UNION.**

The Lathers International Union, Local No. 9, was an unincorporated voluntary association, (R. 29, 53) organized for the mutual protection and welfare of its members. (Constitution and By-Laws, Preamble, Object) It consisted of about 110 lathers. (R. 25) Its funds were derived from dues, initiation fees, assessments and fines from its members. (By-Laws, Sections, 27, 28, 29, 32, 33, 35, 36, 39) Funds of the Union could be used only for its running expenses. (By-Laws Section 34) All services are rendered by members of the Union and no one performs any service or does any work for the Union outside of its elected officers. (R. 25, 26, 58) It was not engaged in any business involving any financial dealings with the public but its organization and operations were those of a purely mutual improvement association, limited in membership to union lathers. (Constitution and By-Laws)



### STATUS OF LINDSAY.

Lindsay was a member of the Lathers Union who was elected to the office of Business Agent for the term of one year at the regular election in which other officers of the Union were elected, on June 29, 1931. (R. 17) The office was provided for by Section 1 of the Constitution and its duties prescribed by Section 13 of the By-Laws. Dean, who succeeded Lindsay, testified that the business agent had no hours of work, did not have to report at any place or at any hour of the day, and made a weekly report to the Union. (R. 24-25) He stated the general duties of the business agent to be to take care of the business matters of the organization at all times. (R. 13) There was no one who gave any instructions to the business agent except such instructions that might be adopted at a meeting of the Union and that his duties were performed without any supervision from anyone. (R. 28) The business agent was the custodian of everything in the organization and had authority to take all the records and even the charter from the wall. (R. 15) He had authority to call men from a job, which no one else in the Union, not even the president, could do. (R. 29) He could not be discharged by any officer in the Union, but his office could be declared vacant, upon charges being preferred by a member of the Union, after a trial and a two-thirds vote of the Union. (R. 54) (By-Laws Sections 13, 37) By virtue of office he was a member of the Building Trades Council. (R. 30) His compensation was such salary as the Union might vote. (By-Laws Section 3) (R. 54) The trip to Fredericksburg was pursuant to a motion adopted at a meeting of the Union on December 14, 1931, that Lindsay collect a

committee to go to Fredericksburg and find out the names of the brothers who were working unfair. (R. 17) At a previous meeting of the Union it had been reported that two men were working for \$5.00 a day (R. 19) on a non-union job when the regular union scale was \$13.00 a day. (R. 21)

### **ASSIGNMENTS OF ERROR.**

The plaintiff, Standard Accident Insurance Company, having duly noted in open Court an appeal from the decree entered in the above entitled cause on June 30, 1932, assigns the following errors in the record and proceedings in said cause:

1. The Court erred in dismissing the Bill of Complaint.

2. The Court erred in thereby holding that the Lathers International Union, Local No. 9, was a person carrying on employment within the District of Columbia within the meaning of the Longshoremen's and Harbor Workers' Compensation Act, approved March 4, 1927, (U. S. Code, Title 33, Chapter 18) as made applicable to the District of Columbia by Act of Congress approved May 17, 1928 (D. C. Code, Title 19, Chapter 2), and that the said Lathers Union was subject to the provisions of the said Compensation Act.

3. The Court erred in thereby holding that Opie F. Lindsay was an employee of the said Lathers International Union, Local No. 9, and that the relation of master and servant existed between the said Lindsay and the said Lathers Union.

4. The Court erred in thereby holding that the defendant, Robert J. Hoage, Deputy Commissioner, had jurisdiction to enter the award described in said Bill, and that said award was in accordance with law.



5. The Court erred in denying the motion of the plaintiff for an injunction pendente lite.

The assignments of error cover two propositions, namely, whether the lower court erred in holding that the Lathers Union was a person carrying on employment within the provisions of the compensation act, and whether the lower court erred in holding that the relationship of master and servant existed between Lindsay and the Lathers Union. The questions are jurisdictional.

### **ARGUMENT.**

At the outset of the argument it is to be noted that the Bill of Complaint in this case is not simply an appeal from the findings of the Deputy Commissioner but a challenge to the jurisdiction of the Deputy Commissioner and seeks an injunction against the Deputy Commissioner on the grounds that the act under which he was proceeding did not apply to the Lathers Union because it was not comprehended within the act, and did not apply to the Lathers Union and Lindsay because the relationship of master and servant did not exist between them. Such a challenge to the jurisdiction of the Deputy Commissioner presents a matter for the determination of the Court without regard to the finding of the Deputy Commissioner, which has no weight in the determination of the question.

Crowell vs. Benson (U. S.) 76 L. Ed. 369-373.

It is in effect a proceeding de novo, but the taking of testimony is obviated since the plaintiff submits its case on the testimony taken before the Deputy Commissioner.

**The Lathers International Union, Local No. 9, Was Not  
 "A Person Carrying on Any Employment in the  
 District of Columbia" Within the Provisions of  
 the District of Columbia Workmen's Compensation  
 Act, Approved May 17, 1928.**

The Act in question is the Longshoremen's and Harbor Workers' Compensation Act (U. S. Code, Title 33, Chapter 18) as made applicable to the District of Columbia by the Act of May 17, 1928. (D. C. Code Title 19, Chapter 2). This act was designed to accomplish the same general purpose as the workmen's compensation laws of the various states.

Crowell vs. Benson (U. S.), 76 L. Ed. 369-373.

The underlying purpose and theory of all workmen's compensation acts, and the theory upon which they have been sustained by the Courts, and especially by the Supreme Court of the United States, as a reasonable exercise of the police power, is that they place the burden of injuries to employees as a charge upon the industry in which they are employed. Upon this theory they have been sustained against attacks on constitutional grounds as a taking of private property without due process of law.

The first New York workmen's compensation law was challenged in the case of N. Y. Central R. R. Co. vs. White, 243 U. S. 188; 61 L. Ed. 667, on the ground that it violated the fourteenth amendment to the Constitution. In sustaining the act the Supreme Court in the opinion by Justice Pitney, sets out as the theory on which the act is sustained:

"Respecting this, it is important to be observed that the act applies only to disabling or fatal per-



sonal injuries received in the course of hazardous employment in gainful occupation. Reduced to its elements, the situation to be dealt with is this: Employer and employee, by mutual consent, engage in a common operation intended to be advantageous to both; the employee is to contribute his personal services, and for these is to receive wages, and, ordinarily, nothing more; the employer is to furnish plant, facilities, organization, capital, credit, is to control and manage the operation, paying the wages and other expenses, disposing of the product at such prices as he can obtain, taking all the profits, if any there be, and, of necessity, bearing the entire losses."

In the same opinion, after setting out that there is the probability of injury impairing the earning capacity of the employee, the Court says:

"This is a loss arising out of the business, and, however, it may be charged up, is an expense of the operation, as truly as the cost of repairing broken machinery or any other expense that ordinarily is paid by the employer."

Subsequently the New York Statute was amended by the addition of a new group covering all employments in which four or more workmen were engaged. This amendment was attacked under the Fourteenth Amendment, and in sustaining the Act the Supreme Court of the United States in the case of *Ward & Gow vs. Krinsky*, 259 U. S. 503; 66 L. Ed. 1033, in the opinion by Justice Pitney, states that the amendment to the act treats inherent hazard as being virtually universal, and lays down the theory on which the act can be sustained in the following language:



“A sufficient vindication of compulsory Workmen’s Compensation and Employers’ Liability Acts, as it has seemed to this Court, is found in the public interest of the State in the lives and personal security of those who are under the protection of its laws; from which it follows that, when men are employed in hazardous occupations for gain, it is within the power of the state to charge the pecuniary losses arising from disabling or fatal personal injuries, to some extent, at least, against the industry, after the manner of casualty insurance, instead of allowing them to rest where they might happen to fall—upon the particular injured employees or their dependents; and to this end to require that the employer—he who organizes and directs the enterprise, hires the workmen, fixes the wages, sets a price upon the product, receives the gross proceedings, and takes for his reward the net profits, if any—shall make or secure to be made such compensation as reasonably may be prescribed, to be paid in the event of the injury or death of one of those employed, instead of permitting the entire risk to be assumed by the individuals immediately affected.”

In the Arizona Copper Co. cases, 250 U. S. 400; 63 L. Ed. 1058, the Supreme Court, in sustaining a very broad compensation statute, used the following language:

“The statute requires that compensation shall be paid *to* the injured workman or his dependents, because it is upon them that the first brunt of the loss falls; and that it shall be paid *by* the employer, because he takes the gross receipts of the common enterprise, and by reason of his position of control can make such adjustments as ought to be and practically can be made, in the way of reducing wages and increasing the selling price of



the product, in order to allow for the statutory liability. There could be no more rational basis for a discrimination; and it is clear that in this there is no denial of the 'equal protection of the laws'."

In the concurring opinion of Mr. Justice Holmes in the same case he states:

"It is reasonable that the public should pay the whole cost of producing what it wants, and a part of that cost is the pain and mutilation incident to the production. By throwing that loss upon the employer in the first instance we throw it upon the public in the long run, and that is just."

In one of the earliest cases involving the constitutionality of the workmen's compensation Acts, *Mountain Timber Co. vs. State*, 243 U. S. 219; 61 L. Ed. 685, the Court construed the act of the State of Washington and states the basis of its constitutionality as follows:

"If the state is at liberty, notwithstanding the Fourteenth Amendment, to disregard questions of fault in arranging a system of compensation for such injuries, we are unable to discern any ground in natural justice or fundamental right that prevents the state from imposing the entire burden upon the industries that occasion the losses. The Act in effect puts these hazardous occupations in the category of dangerous agencies, and requires that the losses shall be reckoned as a part of the cost of the industry, just like the pay roll, the repair account, or any other item of cost."

In *Cudahy Packing Co. vs. Parramore*, 263 U. S. 418; 68 L. Ed. 366, the theory is set out in the opinion of Justice Sutherland as follows:

“Workmen’s Compensation legislation rests upon the idea of status, not upon that of implied contract; that is, upon the conception that the injured workman is entitled to compensation for an injury sustained in the service of an industry to whose operations he contributes his work as the owner contributes his capital,—the one for the sake of the wages and the other for the sake of the profits.”

Leading decisions in the state Courts are to the same effect. A clear statement is found in the case of *Milwaukee vs. Miller*, 154 Wis. 652; 144 N. W. 188; L. R. A. 1916A-1, in the following language:

“Under the statutory system for dealing with personal injury losses incident to performance of the duties of an employer, they are regarded as mutual misfortunes, to be charged up, as directly as practicable, to the cost of production. The right to have the employer regarded as an agency to make payment to the employee and absorb the same as an expense of the industry, regardless of whether the loss is attributable to any human fault, is a legislative creation within the constitutional exercise of the police power to legislate for the public welfare. It is not a charity, but the recognition of a moral duty and the erection of it into a legal obligation of the public, not of the mere employer, to compensate reasonably those who are injured while in the employment of others, as a part of the natural, necessary cost of production; that obligation being discharged through the agency of the employer.”

And in the case of *Miller & Lux, Inc. vs. Ind. Acc. Com. of Cal.*, 178 Pac. 960; 7 A. L. R. 1291, the Court states that the act is constitutional *only* because the



charges are upon the industry and not upon the employer. The language is as follows:

“At the threshold of the inquiry we should keep in mind the fact that the Compensation Act is held constitutional only because it imposes a charge, not upon the individual employer, but upon the branch of industry in which he is engaged, and gives the employer opportunity of protecting himself by proper insurance.”

It is thus apparent that the entire purpose of workmen's compensation acts is to place the burden upon the *industry or business* so that the cost enters into the *expense of business and is passed on to the public as the consumer*.

The discussions of the courts sustaining the various acts against attacks on constitutional grounds all state the same theory upon which they are sustained, and demonstrate conclusively that the acts are applicable only to business, commercial or industrial enterprises. A voluntary mutual improvement association supported wholly by dues from its members, with no financial dealings with the public, is outside of the operation of these acts, since the theory upon which the acts are upheld cannot operate upon such an association.

That this is the purpose of the act under consideration here is apparent, not only because it is designed to accomplish the same general purpose as the workmen's compensation laws of the states (*Crowell vs. Benson, supra.*), but because the language of the act itself so indicates. The Longshoremen's Act assumes employment in a “business” to be the employment subject to compensation under the Act. Section 30-A



requires that reports from the employer shall state the "business" of the employer. Section 34 requires that an employer who has secured compensation shall post a notice in his place of "business." Section 18 provides for the collection of defaulted payments by recording a copy of the order in the judicial district where the employer has his "principal place of business."

The Act of May 17, 1928, extending the Longshoremen's Act to the District of Columbia is in two short paragraphs and, in the second paragraph excepts any employment that is casual or not in the usual course of the "trade, business, occupation or profession" of the employer. Reading the two paragraphs together it becomes apparent that the definition of the employer carrying on any employment in the District of Columbia refers to employment in a trade, business, occupation or profession. Otherwise the 4th clause of the second paragraph, employment not in the "usual course" of the trade, business, occupation or profession, becomes meaningless.

Since, therefore, workmen's compensation acts apply only to commerce and industry on a theory that the burden is a burden on industry, and since the act in question here is based upon the same theory, the act has no relation to the Lathers International Union, Local No. 9, since that Union is not engaged in any business, industry, trade or profession so as to place the burden of injuries to its members or officers upon an industry and the public.

A labor union, as such, is primarily a social organization and does not engage in any business. In the case of *Hudson vs. Cincinnati*, New Orleans and



Texas Pacific Railway Co., 152 Ky. 711; 45 L. R. A. (N. S.) 184, the Court said:

“However, the court knows as a part of the history of the times that the Order of Brotherhood of Locomotive Engineers, and unions engaged in like efforts, are associations of craftsmen, having for their objects improved working conditions, and resisting in concert, the unjust exactions of capital. Their purposes are social, not commercial. Permanent improved labor conditions, not temporary contractual relations between individuals and employers, are the commendable objects with which they are engrossed. A labor union, as such, engages in no business enterprise.”

In the case of *St. Paul Typothetae vs. St. Paul Bookbinders Union*, 94 Minn. 354; 102 N. W. 725; 2 Ann. Cas. 695, the Court held that statutes providing remedies against associations transacting business did not apply to a labor union.

The Lathers Union had no business dealings with the public whatever, its income being derived solely from dues, initiation fees, assessments and fines from its members (By-Laws) and its aims and purposes are the mutual benefit of its members. Its funds are used solely for the running expenses of the Union. (By-Laws) It does not employ any workmen or clerical hire in connection with the carrying out of the purposes of the Union, but provides salaries to various members of the Union when serving in elective positions. The Union, therefore, carries on no occupation from which it derives any income, and thus is not carrying on any trade, business, occupation or profession within the compensation act.

Similar compensation statutes are held to be restricted to employment in an occupation from which the alleged employer was engaged in earning a living.

State ex rel. Lennon vs. District Court, 138 Minn. 103; 164 N. W. 366.

Marsh vs. Groner, 258 Pa. 473; 102 Atl. 127.

Blake vs. Wilson, 268 Pa. 469; 112 Atl. 126.

Schneider, Workmen's Compensation, page 235.

The case at bar should be distinguished from those in which a Labor Union, or other similar association, is actively carrying on a business aside from its mutual improvement affairs. Examples are unions which engage in the banking business, and the Machinists Union, which built and operates an office building, renting rooms. In such cases, with the union engaged in business, hiring clerks, janitors, elevator operators, etc., and collecting rents or profits, the situation is entirely different. No such elements enter into the present case.

To hold this union to be an employer under this act would be to hold that Congress can require a Voluntary Mutual Improvement Association to take the dues paid by its members and buy accident insurance for one of the members who may be temporarily occupying an elective position. This situation would be contrary to the entire theory upon which compensation laws have been sustained against constitutional objections, and the language of the Fifth Amendment to the Constitution, applicable to the District of Columbia, is just as much a restriction upon the powers of Congress as the language of the Fourteenth Amendment is a restriction upon the state legislatures.



Lappin vs. District of Columbia, 22 App. D. C. 68.

Section 15-A of the act in question prohibits under heavy penalty any deductions from the pay of an employee for the purpose of the act, yet to hold that this Union is within the provisions of the act makes it subject to this penalty since dues collected from Lindsay, as a member, together with dues from other members, must have been used to pay the premium on any policy of insurance. This further illustrates the impossibility of the burden of loss by accidents being borne by any industry or business in this case and demonstrates that such an association as this labor union is not subject to the provisions of the act, nor the jurisdiction of the Deputy Commissioner.

**Opie F. Lindsay Was Not an "Employee" of the Lathers International Union, Local No. 9, at the Time He Sustained the Injuries Resulting in His Death, and the Relation of Master and Servant Did Not Exist.**

The testimony taken at the hearing established the status of this Union as a purely mutual benefit association organized for the improvement of its members. It has no office or clerical force and the affairs of the organization are carried on in its meetings and through the officers elected from its membership in accordance with the constitution and by-laws. These officers are all elected in the same manner, take the same oath of office, and receive such compensation as the Union may from time to time adopt. No individual, other than these officers, performs any duties for the Union, and the duties performed by the officers are not inci-



dent to any trade, business, profession or occupation, since the Union is non-commercial in character, but are performed in connection with the internal government of the Union and its mutual improvement purposes as set forth in its constitution.

Opie F. Lindsay, the decedent, was the *business agent* of the Union, duly elected for the term of one year. The constitution and by-laws (Sec. 26) provide that no member is eligible to an elective office unless he is a member in good standing. As a member, he was required to pay dues, and was as much responsible for the debts and obligations of the Union as any other member. If the treasury of the Union was insolvent, the members could be assessed (Const. and By-Laws, Sec. 35); and Lindsay, as a member, would have been subject to this assessment. Because of the nature of his duties, the business agent spent more of his time in furthering the purposes of the Union than the other officers did, and consequently was allowed a greater compensation than the other officers; but this does not make him any more an employee than the other officers. He received such compensation as the Union might adopt (Const. and By-Laws, Sec. 3). If the Union voted to discontinue his compensation, he would still continue in his elective office for the full term, would still represent the Union on the Council, and perform his other duties. Lindsay was a lather, that was his trade; and, as such, he was not an employee of the Union, but of any contractor or builder for whom he might be working. The other officers were in the same status. The situation might very well arise where the business agent would be working at his trade, for which he would be paid by his em-



ployer, and still perform his duties as an officer of the Union. There is no provision in the constitution and by-laws of the Union that requires the business agent to devote his full time to the duties of his office. On the contrary, it is provided in Section 13 of the constitution and by laws (Duties of Business Agent) that he shall act *only when called upon or when necessary*.

It is well settled that in compensation cases the relation of employer and employee must exist before one is entitled to the benefits of the law and that a claimant is held to strict proof that he is in a class embraced within the provisions of the law, and nothing can be presumed or inferred in this respect.

Hamilton vs. Randall (Okla.) 276 Pac. 705.  
Schneider Workmens Compensation (2nd Ed.)  
160.

The Longshoremen's Act has a limited application, being confined to the relationship of master and servant. (Sec. 5, Longshoremen's Act)

Congress has imposed liability without fault only where the relation of master and servant exists and the fact of that relation underlies the constitutionality of the statute.

Crowell vs. Benson, 76 L. Ed. 369.

The court may determine the fact of employment, and is under no obligation to give weight to the proceedings of the Deputy Commissioner pending the determination of the question of the Commissioner's authority.

Crowell vs. Benson, *supra*.

It is also well settled that the rules for determining the existence of the relationship of employer and employee are the same as at common law for the relationship of master and servant.

28 R. C. L. 760.

Hinds vs. Labor Department, 150 Wash. 230; 62 A. L. R. 225.

McDonald vs. New Haven, 94 Conn. 403; 109 Atl. 176; 10 A. L. R. 193.

Acklin Stamping Co. vs. Kutz, 98 Ohio St. 61; 120 N. E. 229; 14 A. L. R. 212.

Holland vs. Morley Button Co., 145 Atl. 142 (N. H. 1929).

New York Ind. Co. vs. Industrial Accident Commission, 287 Pac. 368.

The rules by which the existence of the relationship of master and servant is determined are set out generally in 18 R. C. L. page 490 in the following language:

“The relation, whatever term may be used to describe it, exists, it ordinarily is said, whenever one person stands in such a relation to another that he may control the work of the latter and direct the manner in which it shall be done. The essential elements are that the master shall have control and direction not only of the employment to which the contract relates, but of all of its details, and shall have the right to employ at will and for proper cause discharge those who serve him. If these elements are missing, the relation does not exist.”

There must be a contract of hiring definite as to parties, nature and extent of services and compensation. Longshoreman's Act; Section 2 (13). See also:



Lyle vs. H. R. Lyle Cider & Vinegar Co., 243 N. Y. 257; 153 N. E. 67; 47 A. L. R. 840.

Gerber vs. Murfreesboro Laundry Co., 15 S. W. (2nd) 737 (Tenn.)

Dixon Casing Crew vs. Industrial Comm., 235 Pac. 605 (Okla.).

McDonald vs. New Haven, 94 Conn. 403; 109 Atl. 176.

Acklin Stamping Co. vs. Kutz, 98 Ohio St. 61.

In *Munter vs. Ideal Peerless Laundry*, 241 N. Y. Supp. 411; 229 App. Div. 56, Munter and his four brothers in October, 1925, purchased a laundry business with intent to incorporate, and secured a workmen's compensation policy, in March, 1926, in the name of the Ideal Peerless Laundry Co. The corporation was not formed until July, 1926. On March 22nd, 1926, Abraham Munter was injured and filed claim. The Court, in reversing an award, held that there was no corporation, and that Munter was not an employee. The Munter Brothers were a co-partnership or an association on the date of the accident. In the Workmen's Compensation Law there is no such personality to be found to constitute at once employer and employee.

In *Stiles vs. Des Moines Council, Boy Scouts of America*, 229 N. W. 841 (Iowa) (1930), claimant was a member of the Boy Scouts engaged at a summer camp as a member of the junior staff, and received his board and lodging free for services in assisting in the activities of the camp. The Des Moines Council was incorporated as a corporation not for profit, and a workmen's compensation policy was issued by the Insurance Company. Claimant was injured at camp while engaged in "gentling" riding horses for use by

other boys. The Supreme Court of Iowa, in reversing an award, said that before an award can be made it must conclusively appear that the employer has come within the act, and that the relationship of master and servant existed. The Court held that the claimant was not a workman or employee.

Testing the situation present in this case by such well established rules it is evident that the essentials of a relation of master and servant are lacking.

There was no contract of hiring. Lindsay, a member of the Union, was elected by his fellowmembers to serve as one of its officers for a specified term and took an oath of office. The terms "elected" and "appointed" are in contrast to "employment" and "contract."

McDonald vs. New Haven, 94 Conn. 403; 109 Atl. 176-179.

If Lindsay was an employee, or servant, who was it who stood in the position of master, "to control the work" of Lindsay "and direct the manner in which it should be done?" There must be such a master before there can be a servant. Dean, testifying as to the nature of the duties and powers of the business agent, said that he did not take orders from anyone, but he was the one who gave orders (R. 13, 28). He was the custodian of everything, and had authority to take the charter off the wall (R. 15). He was the sole judge of what he should do and had complete authority, reporting to the Union at the regular meetings. He could call men off from any job (R. 29), which no one else, even the President, could do (R. 24), go on any job, had no hours of work, did not have to report at



any place (R. 24-25), and generally was a complete free agent in the conduct of his office. He could not be discharged, but could only lose his elective office through preferment of charges, a hearing and a two-thirds vote of the Union (R. 54) (By-Laws, Sec. 4, 13). He performed the duties of his office as laid down in the constitution and by-laws.

Not a single element of the relationship of master and servant is present in this case. Lindsay was not "hired" under any express or implied contract. No one had any control or supervision over his work, or directed the manner and details. No one could discharge him.

In connection with the position of business agent it is significant that at the outset of the hearing on April 13, 1932, when witnesses were excluded by the Deputy Commissioner, Dean, the present business agent, and successor to Lindsay, claimed the right to remain as the representative of the Union, defendant in this case, in preference to Hill, the financial secretary; and the Deputy Commissioner ruled that Dean, as business agent, was entitled to remain as the Chief officer of the Union (R. 9). He remained in the hearing room as the defendant. If this business agent were to sustain some injury and in person present a claim against the Union he would thus be present at a hearing in the dual capacity of plaintiff and defendant, employer and employee. This situation cannot exist in the law, and demonstrates that Lindsay, as business agent, was not an employee.

Munter vs. Ideal Laundry, *supra*.

Lyle vs. H. R. Lyle Cider & Vinegar Co., *supra*.

Employers Liability Assurance Corporation vs.

Industrial Accident Commission, 187 Calif. 615; 203 Pac. 95.

In support of the contention that Lindsay was an employee, the defendants recite the payment of salary, the time taken by the duties, and that this was Lindsay's livelihood. None of these, when analyzed, nor all of them together, give rise to the relationship of master and servant. The receipt of money for services, the devotion of time, and the derivation of a livelihood from the services are present in every instance of independent contractors, partners, agency managers, and other officials. The contention that the Union had full control over Lindsay is not supported by the testimony and the by-laws. True, the Union could impeach him, and after hearing, declare his office vacant, but the very fact that his office could not be declared vacant without formal impeachment and trial demonstrates that he could not be discharged by any person, or by the officials of the Union.

The constitution and by-laws specifically state the grounds on which the business agent may be impeached and his office declared vacant. As set out in Sec. 13, charges can be preferred for "failing to perform his duties." It will be noted that this does not provide for charges as to the "manner" or "detail" of the performance of duty, but solely to "failure to perform." In other words, he can be impeached and removed only for complete failure to perform not for the manner in which he performs.

The testimony of Dean (R. 54), describes the practice of impeachment, requiring a two-thirds vote of the Union to declare the office vacant after a hearing.

This demonstrates that one of the elements of the



relationship of master and servant, namely, the right of the master to discharge at will, is entirely lacking in this situation.

The control required to establish the relation of master and servant is a control as to all the *details* and the *manner* in which work is to be done. (18 R. C. L., page 490.) No one person or group had any such control over Lindsay.

All the essential elements of the relation of master and servant are lacking in this case, and it is submitted that on the record it is clear that Lindsay was not an employee of the Lathers Union.

**The Fact that a Policy of Insurance Was Issued Has No Bearing on the Issue of Jurisdiction.**

The issuance of a policy of insurance does not estop the carrier from contesting jurisdiction, nor does it give jurisdiction to the Commission.

If Lindsay was not in fact an employee, and the Lathers Union was not in fact an employer within the meaning of the Compensation Act, then the issuance of an insurance policy cannot confer jurisdiction, and cannot operate as an estoppel against the insurance carrier.

As was stated by the Court of Appeals of Maryland, in the recent case of *Clement vs. Minning, et al.*, 157 Md. 200; 145 Atl. 485, the application for and issuance of an insurance policy was a measure of precaution to protect the appellant against liability under the Workmen's Compensation Act. It could not extend the scope of the act.

In *Stiles vs. Des Moines Council*, 229 N. W. 841, the Court stated that the fact that the Federal Surety

Company had issued a policy did not, in any manner whatsoever, change the status of the Des Moines Council as regards the question of jurisdiction.

This rule of law is also definitely laid down in the following cases:

Employers Liability Assurance Corporation vs. Industrial Accident Commission, 187 Calif. 615; 203 Pac. 95.

Munter vs. Ideal Peerless Laundry, 241 N. Y. Supp. 411; 229 App. Div. 56.

Barnes vs. Thomas A. Myers & Co. (Md. June 22, 1932), 161 A. 279.

#### **Fifth Assignment of Error.**

It is submitted that the lower Court erred in denying appellant's application for a stay of payments pending final decision of the cause.

A jurisdictional question is raised in this case, and the payments under the award, with no chance of recovering them if the Court should hold that the Deputy Commissioner was without jurisdiction, constitute irreparable damage, which must be that contemplated by Section 21 of the Compensation Act.

#### **CONCLUSION.**

The Lathers International Union, Local No. 9, was clearly not within the provisions of the District of Columbia Workmen's Compensation Act, as it was not carrying on any employment in the District of Columbia within the meaning and intent of the Act, and was not engaged in any business or industry so that the theory and purpose of the act could apply to it.

The relation of master and servant did not, under the



established rules of law, exist between Lindsay and the Lathers Union.

Therefore the injury sustained by Lindsay did not arise out of any employment, and the Deputy Commissioner was without jurisdiction to enter an award.

It is, therefore, respectfully submitted that the decree of the lower Court should be reversed, with directions to the Court to grant the relief prayed in appellant's bill of complaint.

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COURT OF APPEALS  
DISTRICT OF COLUMBIA  
FILED

JAN 23 1933

No. 5787

*Henry W. Hodges*

CLERK

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**In the Court of Appeals of the District of  
Columbia**

**OCTOBER TERM, 1932**

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**STANDARD ACCIDENT INSURANCE COMPANY, A  
CORPORATION, APPELLANT**

*v.*

**ROBERT J. HOAGE, DEPUTY COMMISSIONER FOR THE  
DISTRICT OF COLUMBIA, UNITED STATES EM-  
PLOYEES' COMPENSATION COMMISSION, AND CLARA  
A. LINDSAY, APPELLEES**

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**BRIEF FOR APPELLEES**

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# **In the Court of Appeals of the District of Columbia**

OCTOBER TERM, 1932

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No. 5787

STANDARD ACCIDENT INSURANCE COMPANY, A  
Corporation, appellant

v.

ROBERT J. HOAGE, DEPUTY COMMISSIONER FOR THE  
District of Columbia, United States Employees'  
Compensation Commission, and Clara A. Lind-  
say, appellees.

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## **BRIEF FOR APPELLEES**

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### **STATEMENT OF CASE**

This case arises under the provisions of the Compensation Act of May 17, 1928 (D. C. Code, Title 19, Chap. 2), making applicable to employees in certain employments in the District of Columbia the Longshoremen's and Harbor Workers' Compensation Act of March 4, 1927 (U. S. C., Title 33, Chap. 18), which will be hereinafter referred to as the "Compensation Act."

On December 15, 1931, Opie F. Lindsay, while employed as business agent of the Lathers' Inter-



national Union, Local No. 9, of Washington, D. C., sustained injuries arising out of and in the course of his employment while returning from Fredericksburg, Virginia, to Washington, where he had gone, accompanied by other labor union representatives, to investigate charges which had been brought to the attention of the Union that certain members of the Union were working in violation of union rules. Mr. Lindsay and the other members of the investigating committee were returning to Washington in an automobile which came into collision with a passing motor vehicle, resulting in injuries from which Mr. Lindsay died on the same day.

A claim for compensation was filed January 27, 1931, by appellee Clara A. Lindsay with Robert J. Hoage, deputy commissioner for the District of Columbia, United States Employees' Compensation Commission. The claim was controverted by the appellant herein as insurance carrier for the Lathers' International Union, Local No. 9, on the ground that the said Union was not an employer of the decedent within the meaning of the Compensation Act in force in the District of Columbia, and that the decedent was not an employee within the meaning of the said Act.

A hearing was held by the deputy commissioner, appellee herein, on April 13, 1932, at which time evidence was presented by the interested parties bearing upon the questions herein raised.



The deputy commissioner by compensation order dated May 9, 1932, found as a fact that the decedent, on the date of his death, was an employee and that the Lathers' International Union, Local No. 9, was an employer, and awarded compensation to Clara A. Lindsay, the deceased employee's widow. The deputy commissioner also found that the injury arose out of and occurred in the course of the decedent's employment. The appellant raised no issue before the deputy commissioner concerning the cause of injury and death, but predicated the controversion on the contentions above stated.

Thereafter, the appellant as plaintiff below filed a bill of complaint in the Supreme Court of the District of Columbia seeking a mandatory injunction and praying that the court require the appellee Hoage to vacate and set aside the award of compensation contained in the compensation order of May 9, 1932, and praying further for an order rejecting the claim of Clara A. Lindsay. A motion to dismiss the bill for injunction was filed June 3, 1932, by the appellees, and on June 30, 1932, the court below entered a final decree dismissing the bill. It is from this final decree that this appeal is taken. The court below denied the application of the appellant, plaintiff below, for an interlocutory injunction and this court subsequently denied appellant's special application, case number 1980, for interlocutory injunction pending this appeal.



## STATUTES INVOLVED

## D. C. Code, Title 19, Chapter 2:

An Act To provide compensation for disability or death resulting from injury to employees in certain employments in the District of Columbia, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the provisions of the Act entitled "Longshoremen's and Harbor Workers' Compensation Act," approved March 4, 1927, including all amendments that may hereafter be made thereto, shall apply in respect to the injury or death of an employee of an employer carrying on any employment in the District of Columbia, irrespective of the place where the injury or death occurs; except that in applying such provisions the term "employer" shall be held to mean every person carrying on any employment in the District of Columbia, and the term "employee" shall be held to mean every employee of any such person.

SEC. 2. This Act shall not apply in respect to the injury or death of (1) a master or member of a crew of any vessel; (2) an employee of a common carrier by railroad when engaged in interstate or foreign commerce or commerce solely within the District of Columbia; (c) an employee subject to the provisions of the Act entitled "An Act to provide compensation for employees of the United States suffering injuries while in the



performance of their duties, and for other purposes," approved September 7, 1916, as amended; and (4) an employee engaged in agriculture, domestic service, or any employment that is casual and not in the usual course of the trade, business, occupation, or profession of the employer.

SEC. 3. This Act shall take effect July 1, 1928.

U. S. Code, Title 33, Chapter 18, Sec. 900 et seq.:

SEC. 902. When used in this Act—

(1) The term "person" means individual, partnership, corporation, or association.

SEC. 921. (b) If not in accordance with law, a compensation order may be suspended or set aside, in whole or in part, through injunction proceedings, mandatory or otherwise, brought by any party in interest against the deputy commissioner making the order, and instituted in the Federal district court for the judicial district in which the injury occurred (or in the Supreme Court of the District of Columbia if the injury occurred in the District). The orders, writs, and processes of the court in such proceedings may run, be served, and be returnable anywhere in the United States. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless upon application for an interlocutory injunction the court, on hearing, after not less than three days' notice to the parties in interest and the deputy commissioner, allows the stay of such pay-



ments, in whole or in part, where irreparable damage would otherwise ensue to the employer. The order of the court allowing any such stay shall contain a specific finding, based upon evidence submitted to the court and identified by reference thereto, that such irreparable damage would result to the employer, and specifying the nature of the damage.

#### QUESTIONS PRESENTED

The issues before this Honorable Court are substantially as follows:

1. Right of challenge to the finality of findings of fact of the deputy commissioner as a jurisdictional question.

2. Was the Lathers' International Union, Local No. 9, an employer carrying on any employment in the District of Columbia within the purview of section 1 of the Compensation Act in force in the District of Columbia?

3. Was the decedent, Opie F. Lindsay, who was the business agent of the said Lathers' International Union, Local No. 9, an employee within the purview of section 1 of said Act?

4. Did the court below err in denying the appellant's application for interlocutory injunction?

5. Did the issue of a policy of insurance and the acceptance of the premiums therein estop the appellant from contesting the jurisdiction of the deputy commissioner?



**ARGUMENT**

The appellant at the outset in its brief (page 8) states that the bill of complaint filed in this case was "not simply an appeal from the findings of the deputy commissioner but a challenge to the jurisdiction of the deputy commissioner," and presents a matter for the determination of the court below without regard to the findings of the deputy commissioner, which findings the appellant regards as having no weight in the determination of the question herein presented.

**1. Right of challenge to the finality of findings of fact of the deputy commissioner as a jurisdictional question**

The plaintiff below, appellant herein, presumably filed its bill of complaint under the provisions of section 21 (b) of the Longshoremen's Act. This section limits the court to the determination of questions of law. Upon the authorities hereinafter cited, the questions of fact in this case as determined in the findings of fact in the compensation order filed by the deputy commissioner are to be regarded as final and conclusive upon the court below and upon this court where supported by any evidence.

The plaintiff below made the transcript of testimony taken before the deputy commissioner and the compensation order complained of parts of its bill of complaint as though incorporated therein, and the obvious theory of the plaintiff's case was



that the said findings of fact are not supported by evidence in the transcript of testimony.

On the questions involved, namely, whether the Lathers' International Union, Local No. 9, was an employer, and whether the decedent was an employee of that employer, the plaintiff below made no request for a trial *de novo*, to have again tried the issue of employment. The theory of the case below was not predicated on such *de novo* proceeding, as may be authorized in proper instances under the ruling in the case of *Crowell v. Benson*, 52 S. C. R. 285, cited by the appellant as its authority for having this court disregard the findings of fact of the deputy commissioner on the questions involved. The appellant seeks to have this court delve into the evidence to redetermine questions of fact on the issue of employment.

The appellees respectfully contend that since the appellant is merely entitled to seek a *judicial review* under section 921 (b) of the Compensation Act, on the pleadings filed, to determine whether the compensation order is "not in accordance with law" the appellant is not, at this stage of the proceedings, entitled to consider the bill as the equivalent of an application for a trial *de novo* on the basis of *Crowell v. Benson, supra*. The appellant has chosen its course and has offered the transcript of testimony taken before the deputy commissioner as a basis for its application for review. It should not now be heard to change the theory of its case or



to enlarge the scope of inquiry by the court beyond the right of review given in the statute above cited; such review being limited to questions of law only and not to authorize the reweighing of the facts presented before the deputy commissioner on the issue of employment herein raised.

The Longshoremen's and Harbor Workers' Compensation Act was passed by Congress on March 4, 1927, to give relief to employees engaged in *maritime employment upon the navigable waters of the United States*. In order to expedite the passage of a compensation law for the District of Columbia, Congress adopted the expedient of applying the Longshoremen's and Harbor Workers' Compensation Act to the District of Columbia by the Act of May 17, 1928. Many of the provisions of the Longshoremen's Act obviously can not apply in the District of Columbia in the administration of the local Act, particularly where the provisions deal with the *admiralty and maritime jurisdiction of the United States*, so that the Act must be considered as devoid of all attributes which could not in any event apply to the District of Columbia.

Congress, by the Constitution, is given plenary jurisdiction to legislate for the District of Columbia and in so doing it acts in the same capacity as any State legislature would act for a State in passing laws of State concern. In the case of *Atlantic Cleaners & Dyers, Inc., et al. v. United States*, 52 S. C. R. 607, 609, decided May 23, 1932, Mr. Justice



Sutherland in commenting upon the power of Congress to legislate for the District of Columbia, said:

The power exercised, and which gives vitality to the provision, is the plenary power to legislate for the District of Columbia, conferred by Article 1, Section 8, Clause 17 of the Constitution. Under that clause, Congress possesses not only every appropriate national power, but, in addition, all the powers of legislation which may be exercised by a State in dealing with its affairs, so long as other provisions of the Constitution are not infringed. *Capitol Traction Company v. Hof*, 174 U. S. 1, 5; 19 S. Ct. 580, 43 L. Ed. 873.

Congress is not limited by the Constitution in passing laws of local application for the District of Columbia as it is limited in passing laws of national concern, for which it was primarily created by the Constitution. In legislating for the Nation, Congress is limited to the powers expressly contained in the Constitution. However, in legislating for the District of Columbia it is not so restricted, but can legislate in local affairs with the same freedom and approximately to the same extent as any State legislature. Therefore, in providing the Compensation Act for the District of Columbia, Congress legislated in its local capacity as distinguished from its national capacity.

Careful analysis of the case of *Crowell v. Benson*, *supra*, will clearly illustrate the argument of the appellees in this respect. The deputy commis-



sioner in the decision mentioned determined rights as between employer and employee in so far as he had authority to do so conferred upon him by Congress acting under *limited* powers. The Federal courts by Article 3, Section 2 of the Constitution (*the constitutional courts*) are given express authority independently to determine questions of *admiralty and maritime jurisdiction* and, therefore, Congress was *restricted* by the Constitution in providing a maritime compensation law to the extent that such law to be constitutional could not deprive the *constitutional courts* of the right given directly to them by the Constitution, to hear and determine independently constitutional and fundamental questions pertaining to the jurisdiction of Congress to so legislate. Below will be given excerpts from the United States Supreme Court's decision in the *Crowell v. Benson* case, which clearly indicate the basis upon which the above argument is made.

As the Act relates solely to injuries occurring upon the navigable waters of the United States, it deals with the maritime law, applicable to matters that fall within the admiralty and maritime jurisdiction (Const. Art. III, sec. 2; *Nogueira v. N. Y., N. H. & H. R. R. Co.*, 281 U. S. 128, 138) and the general authority of the Congress to alter or revise the maritime law which shall prevail throughout the country is beyond dispute.

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Apart from cases involving constitutional rights to be appropriately enforced by proceedings in court, there can be no doubt that the Act contemplates that as to questions of fact, arising with respect to injuries to employees within the purview of the Act, the findings of the deputy commissioner, supported by evidence and within the scope of his authority, shall be final.

\* \* \* \* \*

In the present instance, the argument that the Congress has constituted the deputy commissioner a fact-finding tribunal is unavailing, as the contention makes the untenable assumption that the constitutional courts may be deprived in all cases of the determination of facts upon evidence even though a constitutional right may be involved.

\* \* \* \* \*

As the question is one of the constitutional authority of the deputy commissioner as an administrative agency, the court is under no obligation to give weight to his proceedings pending the determination of that question.

\* \* \* \* \*

We think that the essential independence of the exercise of the judicial power of the United States in the enforcement of constitutional rights requires that the Federal court should determine such an issue upon its own record and the facts elicited before it.

This brings us to the consideration of the effect of the *Crowell v. Benson* decision in the District



of Columbia, and upon which the appellant bases his principal argument. Congress in legislating for the District of Columbia can do so without restriction except in so far as the fundamental rights of citizens generally are concerned. Congress is not required to examine the Constitution when considering local legislation for the District of Columbia to determine whether or not it is transgressing upon the authority of a *constitutional court* or giving away powers which by constitutional grant rest solely in such *constitutional court*. Therefore, in pursuance of this plenary jurisdiction conferred upon it, Congress has seen fit to create local legislative courts of which the Supreme Court of the District of Columbia and the Court of Appeals of the District of Columbia, when passing upon matters of *local concern*, are representative. This Honorable Court may, however, exercise the powers vested in Federal courts when passing upon matters of *national concern*.

The question whether the Supreme Court of the District of Columbia and the Court of Appeals of this jurisdiction are legislative courts created by Congress, or constitutional courts within the meaning of the Federal constitution, has been definitely decided by the United States Supreme Court in the case of *Ex parte Bakelite Corporation*, 279 U. S. 438 (1929), in which that court said:

These courts (referring to courts of the District of Columbia), this court has held, are created in virtue of the power of Con-



gress "to exercise exclusive legislation" over the district made the seat of government of the United States, are *legislative rather than constitutional courts*. (*Emphasis supplied.*)

The Supreme Court of the United States has recognized in the case of *New York Central R. R. Co. v. White*, 243 U. S. 188, and the case of *Dahlstrom Metallic Door Company v. Industrial Board of New York*, 52 S. C. R. 202, 284 U. S. 594, that where State compensation statutes similar in effect to the Compensation Act in force in the District of Columbia give right of judicial review from a finding of a deputy commissioner or compensation administrator on questions of law, the findings of fact of such deputy commissioner or administrator, where supported by any competent evidence, are to be regarded as final and conclusive and such statutes are further construed as not authorizing a trial *de novo* of the facts involved. In the two cases cited above the doctrine of finality of fact findings may be regarded as having been accepted by the Supreme Court of the United States without qualification as to "jurisdictional" or "fundamental" facts. The court recognizes the constitutionality of the principle that *all* fact findings are final and conclusive upon the court where review of a compensation order is sought if the order is supported by any competent evidence. This principle does not extend to authorize the court to reweigh the evidence to determine the preponderance thereof, but on the contrary refers to a residuum of legal



evidence sufficient to satisfy the court that there was some evidence to support the award.

The appellees respectfully contend that the exceptions to the principle of finality of findings of fact of a deputy commissioner stated in the case of *Crowell v. Benson*, *supra*, do not apply in the District of Columbia. The Supreme Court has accepted the general principle in the cases cited and quoted in part above that the findings of a deputy commissioner where supported by evidence shall be final. In the *Crowell-Benson* case two exceptions were made to this principle where they involve the scope of the authority of the deputy commissioner and the two exceptions are (1) where the relationship of employer and employee is questioned, and (2) whether the injury occurred upon the navigable waters of the United States. These two exceptions to the rule of finality of fact findings were necessarily made by the Supreme Court to give effect to Article 3, Section 2 of the Constitution and they can and do appertain to cases arising under the Longshoremen's Act in matters affecting only the jurisdiction of Federal constitutional courts over *admiralty and maritime affairs*. The Compensation Act in force in the District of Columbia does not infringe upon the constitutional right of any court to hear and determine the facts in compensation cases and the plaintiff below did not urge this point upon the court and should not now be heard in an argument of this nature before this Honorable Court.



Congress has placed the final power to determine questions of fact in the exclusive jurisdiction of the deputy commissioner, reserving questions of law for the court to pass upon. This principle of finality of fact findings extends to *all* questions of fact including those involved in the present case. This Honorable Court therefore should regard its authority as extending only to determine whether there is any evidence to support the findings of fact on the issues. If it is found that there is any evidence to support the award of the deputy commissioner, the award should be sustained. In this connection it is deemed pertinent to give the following quotation from the case of *Susan Powell v. Hoage*, 57 Fed. (2d), 766, decided by this Honorable Court on March 21, 1932, in which the court in part said:

The conclusion reached by us, as well as by most of the courts, is that the deputy commissioner's findings of fact must be accepted as conclusive if supported by evidence unless there was some irregularity in the proceedings before him \* \* \* while, therefore, we might have reached a different conclusion on the evidence, we feel that we may not, under the rules, substitute our judgment for that of the commissioner, and since we may not, it follows that we must affirm the action and decision of the court below.

As indicated above, the theory of the appellant's case below did not involve a trial *de novo* nor did the bill make such request or the equivalent thereof. The bill merely referred to the record of the hear-



ing before the deputy commissioner and to the compensation order and sought a *statutory review* of such record under section 21 (b) of the Longshoreman's Act, and therefore the appellant sought only to have questions of law reviewed.

In the case of *Georgia Casualty Company v. Hoage*, 59 Fed. (2d) 870, the appellant therein sought to have the rule expressed in *Crowell v. Benson*, *supra*, applied in a case where the theory of the appellant's suit was similar to that in the present case; namely, the appellant sought a *statutory review* and at the hearing before this Honorable Court attempted to have the rule expressed in the *Crowell-Benson* case applied. This Honorable Court refused to accept the appellant's change of theory in its case, and speaking through Mr. Justice Groner said:

But here no request was made of the lower court for a trial *de novo*, nor was any new evidence offered on behalf of the carrier. The court below was asked to consider the question on the evidence adduced before the deputy commissioner, and did so, and no assignment of error in this respect was made on this appeal. Whatever right, therefore, appellant had to have the questions raised by his bill considered by the lower court on new and different evidence was lost by the procedure adopted and this court must take the case as it finds it, and this involves our determination on the record before us whether the award made by the deputy com-



missioner was contrary to law for the reason that deceased at the time of his injury was a partner and not an employee, and his claim therefore not within the jurisdiction of the deputy commissioner.

2. Was the Lathers' International Union, Local No. 9, an employer carrying on any employment in the District of Columbia within the purview of section 1 of the Compensation Act in force in the District of Columbia?

The Lathers' International Union, Local No. 9 (which will be referred to hereinafter as the "Union") is a voluntary unincorporated association which is a "person carrying on any employment in the District of Columbia" within the purview of the District of Columbia Workmen's Compensation Act approved May 17, 1928. It is a labor union as that term is universally recognized and has affiliations with similar bodies interested in the welfare of employees engaged in trade. As an unincorporated association it can be sued in its own name as a *legal entity*, notwithstanding the old common law doctrine that such association had the characteristics of a partnership. The Supreme Court of the United States in the case of *United Mine Workers of America v. Coronado Coal Company*, 259 U. S. 344, 66 L. Ed. 975, recognizes an unincorporated association's separate legal entity stating:

For these reasons we conclude that the International Union District No. 21 and the



27 local unions were properly made parties defendant and properly served by process on their principal officers.

It will be observed by reading the statute above quoted that the District of Columbia Workmen's Compensation Act applies "in respect to the injury or death of *an employee of an employer* carrying on *any* employment in the District of Columbia, irrespective of the place where the injury or death occurs, except that in applying such provision the term 'employer' shall be held to mean *every person* carrying on *any employment* in the District of Columbia, and the term 'employee' shall be held to mean *every employee of any such person.*" ( Section 1.)

It will be observed that the word *person* is used where reference is made to the employer. The term *person* as used in the Act has a special and peculiar significance. This significance is made clear in the definition of the word as given in the Act itself in section 2 (1) which reads as follows:

When used in this Act \* \* \* the term "person" means individual, partnership, corporation, or association.

It will be further observed, therefore, that by the very terms of the statute itself the Union in this case comes directly within the meaning of the word "employer" as defined in the Compensation Act. It is an *association* included in the definition of the term "person" as defined by the Act.



An examination of the 40 odd compensation laws in effect in the various States shows that a large percentage of them are decidedly more restrictive than the Act applicable to the District of Columbia. Some apply to employers employing more than a certain number of employees. Others apply only where the employer is in business for *pecuniary gain*. Still others require that the employer be engaged in a business, trade, occupation, or profession. The appellant, plaintiff below, was apparently under the impression that the local Compensation Act is in the class last mentioned for in its bill (R. 4) it recites:

That it appears from said testimony that the Lathers' International Union, Local No. 9, was and is an unincorporated voluntary association organized for the mutual welfare and protection of its members, and that it was not engaged in any business, trade, occupation, or profession in the District of Columbia, etc.

The appellant obviously is interpreting the status of the local Lathers' Union in the light of and under the definition of the term "employer" as contained in an entirely different and more restrictive compensation law. It is respectfully contended that the District of Columbia Workmen's Compensation Act is distinctly broader in scope than the appellant suggests it to be and that an "employer" is *any person carrying on any employment* in the District of Columbia. In defining "employer" there is



nothing in the Compensation Act requiring the interpolation of the words "*business, trade, occupation, or profession*" as the appellant intimates.

A person carrying on *any employment* is therefore an employer. The word "employment" is defined in Webster's New International Dictionary as: (1) The act of employing or state of being employed; (2) That which engages or occupies; that which consumes time or attention, occupation; service. An "employer" is defined in Webster's Dictionary as "One who employs another, as an employee or workman"; and an "employee" as "One employed by another, a clerk or workman in the service of an employer, one employed in the position of some authority." The court in an Iowa compensation case said of the terms "employee" and "employment":

They are not of the technical language of the law or of any science or pursuit and must, therefore, be construed according to the context and approved usage of the language. *State v. Foster*, 37 Iowa 404.

In the case of *Gerber v. Central Council of Stockton*, 2 Calif. Industrial Accident Commission Dec. 554, it was held:

That the individual members of a labor union, an unincorporated association with no funds, are the employers of their janitor for compensation. *Schneider Workmen's Compensation Law* (2d Ed.), page 172.



It is now generally recognized that the tests for determining the existence of the relation of employer and employee are the same as those at common law for determining the relation of master and servant. The usual tests applied are (1) whether any control is exercised by the alleged employer over the alleged employee, and (2) whether the alleged employee is subject to discharge on disobedience and misconduct. See Schneider's Workmen's Compensation Law (2d Ed.), page 161; *U. S. Board & Paper Company v. Landers*, 47 Ind. App. 315; *Tuttle v. Embury Martin Lumber Co.*, 192 Mich. 385; *Sheperd v. Jacobs*, 204 Mich. 110; *Hines v. Labor etc. Dept.*, 15 Wash. 230.

The Lathers' Union is an association organized for the sole purpose of obtaining material gain for its members whether it be by obtaining and maintaining high wages, better working conditions, shorter working hours, or similar benefits. Its obvious function is not that of a social organization nor is it a charitable body. It is the purpose of workmen's compensation legislation to place the cost of maintaining and the rehabilitation of injured employees as an expense of the operation of the employer and it matters not whether the employer is engaged in business for gain or otherwise. It is an incidental expense chargeable to the operation of the employer whatever the operation may be. To eliminate from the beneficial provisions of



the Compensation Act certain employees because the employers are not engaged in trade, business, occupation, or profession for pecuniary gain would be to exclude a large general class entitled to be covered by such legislation and to make the operation of the employer the test rather than the relationship, which would obviously defeat the remedial purpose of the Act. It has been held that employees of municipal, county, and state governments come within the purview of compensation legislation even though it is obvious that such local governments are not engaged in business *for gain or profit*.

It is obvious that members of the police and fire departments of municipal corporations are not engaged in any enterprise for *gain* yet they are generally held to be within the purview of workmen's compensation laws. See *Walker v. City of Port Huron*, 185 N. W. 754 (Mich.); *La Belle v. Village of Grasse Pointe Shores*, 167 N. W. 923 (Mich.); *Millaley v. City of Grand Rapids*, 203 N. W. 651 (Mich.); *State v. Dist. Court of St. Louis County*, 158 N. W. 790, 791 (Minn.); *Segale v. St. Paul City Reg. Co.*, 180 N. W. 177 (Minn.); *McCarl v. Borough of Houston*, 106 Atl. 104 (Pa.); *Johnson v. Industrial Commission*, 157 N. E. 141 (Ill.); *City of Minneapolis v. Ind. Comm.*, 171 N. E. 167 (Ill.); *McNally v. City of Saginaw*, 163 N. W. 1015 (Mich.); *Stephens v. Village of Nashwank*, 200



N. W. 927; *Bingham City Corporation v. Ind. Comm.*, 243 Pac. 113 (Utah); *City of Burlington v. Pietres*, 218 N. W. 816 (Wisc.).

Members of the National Guard of a State have been held to be employees within the meaning of certain State Workmen's Compensation Laws. Certainly these employees are not engaged in any occupation for *pecuniary gain* so far as the State is concerned. *Nebraska National Guard v. Morgan*, 199 N. W. 557 (Neb.); *State v. Johnson*, 202 N. W. 191 (Wisc.); *Baker v. State*, 156 S. E. 917 (N. C.).

The appellant makes the point that compensation legislation can be considered as applying only to business, trade, occupation, or profession, where the object sought is pecuniary gain to the employer. (Page 14, 15, appellant's brief.) Compensation legislation was not designed solely to protect employees in industry or business for *pecuniary gain*. There are many employees in the United States and in the District of Columbia who are working for employers who are not carrying on business for profit or pecuniary gain and these employees perform their daily service for such employers for definite compensation just as much as employees in a factory or mill or in any other industrial concern. Compensation legislation is primarily for the benefit of the employee and not for the employer. Such laws are generally designed to include all persons employed within the purview of the remedial legislation.



At this juncture it is deemed pertinent to cite the case of *Marsh v. Groner*, 102 Atl. 127, in which the court stated:

There are few words more current in our speech than the word "business"; few that include a greater variety of subjects and yet none which, in popular speech, have greater or more marked singleness in denotement. When one's business is the subject of common speech, no one can be in doubt as to the reference. It would be a very exceptional person—we do not know how to otherwise describe him—who would not understand that the reference is to be the habitual or regular occupation that the party was engaged in with a view to winning a livelihood or some gaining. These objects are necessarily employed when one's business is spoken of. Eliminate them, livelihood and gain, and it is no longer business, but amusement, which no one confounds with business. What we have said as to the popular understanding of the word business is just what Webster defines it, "Some particular occupation or employment habitually engaged in for livelihood or gain."

The trend of time has been distinctly in the direction of increasing the classes of employees intended to be brought within the purview of compensation legislation, and compensation laws have shown a distinct tendency to expand beyond their original narrow and restricted scope so that in



many States they no longer cover employees in certain hazardous employments but include all persons in employments.

Compensation laws are uniformly recognized as being remedial in character and have been enacted in the interest of the public welfare. The courts have been practically unanimous in giving to them liberal, equitable, and reasonable construction designed to effect the obvious purpose and intent of such statutes. So far as the language will permit, the District of Columbia Workmen's Compensation Act should be construed to this end. The law upon which the local Act has been based has already received such construction by the United States Supreme Court in the case of *Baltimore and Philadelphia Steamboat Company v. Norton*, deputy commissioner, 284 U. S. 408. See also *Pacific Employers Insurance Company v. Pillsbury*, 61 Fed. (2d) 101; *Obrecht Lynch Corporation v. Clark*, deputy commissioner, 30 Fed. (2d) 144; *Taylor v. Lawson*, deputy commissioner, 60 Fed. (2d) 165.

It is respectfully contended, therefore, that under the liberal construction to which the local compensation act is entitled the Lathers' International Union, Local No. 9, is an employer carrying on an employment in the District of Columbia within the intent and meaning of said Act.



3. Was the decedent, Opie F. Lindsay, who was the business agent of the said Lathers' International Union, Local No. 9, an employee within the purview of section 1 of the said Act?

The facts in the transcript of record, which are undisputed, show that Mr. Lindsay was engaged exclusively in the employ of the Union as its *business agent*. (R. 16, 17, 19, 21, 22, 24, 25.) He was paid a regular salary of \$80 per week (R. 21, 26, 57), of which \$15 covered the use of his personal automobile. The Union as a legal entity had full control over Mr. Lindsay and he was at all times subject to its direction. (R. 25.) It is important at this juncture to stress the fact that this employment was Mr. Lindsay's *sole means of livelihood*.

Mr. Lindsay was elected by the Union to the position he occupied for a period of twelve months. (R. 16, 17, By laws, Sec. 13.) He had served in the capacity of business agent for several years prior to his death, at the same rate of salary. He had been elected to fill this position during the periods of July 1, 1930, to June 30, 1931, and July 1, 1931, to June 30, 1932. (R. 17.)

In carrying out the duties required of him (By-laws 9, Sec. 13, R. 14), it was necessary for Mr. Lindsay to make investigation in union matters, such as alleged violations of rules, employment of nonunion labor, and like inquiries (R. 17, 19). On the day of his death he had been making an investigation at Fredericksburg, Virginia, accompanied



by other union representatives. The appellant does not assert that Mr. Lindsay had abandoned the duties he was performing for the Union at the time of the accident nor does the appellant contend that Mr. Lindsay was on any business other than that in connection with his services for the Union. Mr. Lindsay had received specific orders from the Union to make the investigation at Fredericksburg. (R. 17.) He was required to report the result of his investigation (R. 20), but due to the accident he was unable to complete the report. The Union through its members had the inherent authority to discharge Mr. Lindsay or to remove him as business agent and at any time they saw fit, to engage another person in his place or stead.

All of the essential elements necessary to establish an employer-employee relationship between the Union and Mr. Lindsay are present. These elements, which are those relating to pay, control over the individual, and the right to discharge are so generally recognized that the appellees deem it unnecessary to furnish further additional authorities exemplifying tests applying in cases of this kind.

As previously stated Mr. Lindsay received a salary of \$80 a week, which was paid to him by the Union. He was under the exclusive direction and control of the Union. He was required to make such investigations or to perform such other duties in response to orders as the Union from time to time saw fit to give him. He was subject to dis-



charge from his position as business agent, and other disciplinary action at the hands of the Union. Sec. 13 of the Union By laws, provides that he shall attend to all business the Union may direct.

The fact that Mr. Lindsay was elected to the position of business agent in no way operates to change his status from that of an employee to something else. Election is simply one method of employing assistants and others in carrying out the business of the Union. It is respectfully submitted that this court should take judicial notice of the fact that in this type of organization it is a common practice for the business transactions of the organization to be carried out under parliamentary procedure, and it is under this procedure that Mr. Lindsay was employed and by the same procedure he could have been disciplined or discharged.

The question, who are employees, is naturally the other side of the question, who are employers, as one does not exist without the other. The term "employee" which is used in some of the compensation laws in the United States is a broader term than "workman" which is used in other laws. "Employee" is the term used in the greater number of acts to designate the persons given rights or benefits thereunder. The object of compensation laws is clearly for the benefit of the employee, and there are many cases where the courts indicate the law is to be construed liberally in the interest of the employee.



In the case of *Allen-Garcia Co. v. Industrial Comm. et al.*, 166 N. E. 78, the Supreme Court of Illinois held that:

The definitions of "employer" and "employee" in Workmen's Compensation Act should be broadly construed.

In the case of *Texas Employers' Insurance Association v. City of Tyler*, 283 S. W. Rep. 932, 933, the circuit court of appeals stated that:

The Workmen's Compensation Act is regarded as a remedial statute, and should be liberally construed. This liberality, we think, should not only be indulged in applying the remedies provided for, but in determining what legal entities may claim the benefit of those remedies.

In the case of *In Re Duncan*, 127 N. E. 289, Ill. App. Ct., the court said:

The Workmen's Compensation Act, being remedial in character and intended to cure defects existing in the former laws, should be liberally construed to carry into effect the legislative purpose, even to the inclusion of cases within the reason though outside the letter of the statute. And see also 36 Cyc. 1175.

The term "employee" as used in the District of Columbia Workmen's Compensation Act is obviously entitled to its broadest definition or meaning for the Act provides that the term "employee" shall be held to mean *every employee* of any such



person (employer). The Act literally means what it says when it includes *any employee* of an employer carrying on *any employment* in the District of Columbia. As pointed out in the argument above the local Compensation Act is not restricted, so far as the character of the employer's operation is concerned, by either the phrase "for gain" or "for pecuniary gain" which appears in many other compensation laws. Such restrictive phrases materially limit the class of employees intending to be covered thereby. Judicial construction of these phrases of necessity exclude religious, charitable, and educational operations. Reference to the New York Workmen's Compensation Law as made by appellant is of no value to this Honorable Court in determining the question now before it, although the District of Columbia Workmen's Compensation Act was largely adopted from the New York law, for the reason that the New York law extends only to certain enumerated *hazardous occupations*, whereas there is no such limitation in the District of Columbia Workmen's Compensation Act.

Congress in enacting the compensation law for the District of Columbia obviously omitted all of the restrictive provisions which appear in many of the State compensation laws with respect to the class of employees covered. It must be inferred, therefore, that Congress intended to give to the District of Columbia a compensation law which



would cover every person in the service of another. It obviously intended to broaden the application of compensation legislation and to include thereunder all classes of employees, with the ultimate purpose of alleviating suffering and distress to the unfortunate victims of accidents in employment, the primary responsibility for which morally and legally rests with the employer.

The appellees therefore respectfully submit that the Compensation Act in force in the District of Columbia is sufficiently broad in its remedial aspect to cover *any employee* of any religious, charitable, educational, fraternal, or other similar organization or association so long as the general relationship of master and servant is shown. See *Roman Catholic Archbishop of San Francisco v. Industrial Acc. Comm.*, 230 Pac. 1, Cal. S. Ct. 1924, and cases cited therein. In this case the Supreme Court of California held that there was evidence to sustain the finding that a workman at the instance of the pastor of a Roman Catholic Church, shingling the roof thereof, was an employee of the church, a corporation sole, and not a contractor within the meaning of the California workmen's compensation law. The court stated, *inter alia*:

We have examined the law in other jurisdictions with reference to the question whether the trade, business, profession, or occupation includes charitable, educational,



religious, philanthropic, or eleemosynary institutions, and have found that in most of the compensation acts such institutions are not in terms expressly excluded from the operation thereof. There are only two, however, Illinois and Pennsylvania, which expressly include such institutions. Rev. Stats. Ill. 1917, p. 1450. Pa. Laws, 1915, p. 736. On the other hand, the States of Idaho and Georgia expressly exclude charitable organizations and institutions from the operation of their respective acts. Ga. laws 1920, p. 167; Idaho Laws, 1917, c. 81, Sec. 3. A number of the acts are elective and include within their operation only those employments in which 3 to 16 employees are regularly employed. It may be that in States where the number of employees determines whether the employer comes within the act, nonprofit organizations, if employing the statutory number, would not be excluded. The industries embraced in several of the acts are enumerated and classified as extra hazardous or hazardous. There are a number of acts which expressly apply only to industrial or profitable undertakings or business, as, for instance, Colorado, Kansas, Maryland, New York, West Virginia, Idaho, Hawaii, Nebraska, and possibly, Washington, Ohio, and Oregon.

From the foregoing it is reasonable to assume that inasmuch as the District of Columbia Workmen's Compensation Act does not specifically ex-



clude charitable, educational, religious, philanthropic, or eleemosynary institutions, it is broad enough to include them and it is so contended.

It might be stated therefore that the true requisite to the existence of employee-employer status is that the parties enter into a relation whereby one is empowered to control and direct the other, and the other obligated to render personal service under control and direction. *Shannon v. Western Ind. Co.*, 242 S. W. 775, 257 S. W. 522 (Texas); *Press Pub. Co. v. Ind. Acc. Com.*, 210 Pac. 820 (Cal.); *Western Indemnity Co. v. Pillsbury*, 159 Pac. 721 (Cal.); *Pace v. Appanoose County*, 168 N. W. 916 (Iowa); *Angel v. Ind. Com.*, 288 Pac. 509 (Utah); *Skeels v. Paul Smith Hotel Co.*, 195 App. Div. 39 (N. Y.); *O'Donnell v. South Fayette Tp. School District*, 161 Atl. 887.

The appellees therefore respectfully contend that under the evidence, Opie F. Lindsay, was an employee of an employer within the intent and meaning of section 1 of the District of Columbia Workmen's Compensation Act.

**4. Did the court below err in denying appellant's application for interlocutory injunction?**

The appellant as plaintiff below sought an interlocutory injunction to set aside the payment of compensation ordered by the deputy commissioner in the compensation order complained of in the bill. This application was opposed by the appellees, defendants below, on the ground that the



plaintiff had failed to set forth a proper premise for its application. The plaintiff below sought to have the court allow an interlocutory injunction on the ground that because of the lack of financial responsibility of the appellee Lindsay, the plaintiff would suffer irreparable injury.

The statute in section 921 (b) quoted above, sets forth the specific requirements as a condition precedent to the allowance of an interlocutory injunction. They are (1) a finding that irreparable damage would ensue to the employer, and (2) that any order of the court allowing a stay of payments, *shall contain* a specific finding, based upon evidence submitted to the court and identified by reference thereto, that such irreparable damage would result to the employer, specifying the nature of the damage. The granting of an interlocutory injunction, which is generally recognized as an intermediary order in a case, is a matter which rests solely within the discretion of the lower court. The appellant herein has not alleged any abuse of discretion on the part of the court below and should not therefore be heard to complain of the action of the lower court in denying its application. Moreover, the court below in denying the application for interlocutory injunction must have been satisfied that the plaintiff had failed to establish irreparable damage within the purview of section 921 (b) of the Longshoremen's Act. See also 4 C. J. 803, paragraph 2768; *Obrecht Lynch Corp. v. Clark*, 30 Fed.



(2d) 134; *M. P. Smith & Sons, Inc. v. Locke, deputy commissioner* (Aug. 1931), 1932 A. M. C. 143. It is submitted, therefore, that the lower court did not err in denying the application of the appellant, plaintiff below, for an interlocutory injunction.

**5. Did the issue of the policy of insurance and the acceptance of the premiums therein estop the appellant from contesting the jurisdiction of the deputy commissioner?**

The records of the deputy commissioner show that the carrier, appellant, issued a policy of insurance, No. AZ 286574 covering the Wood, Wire, and Metal Lathers' International Union Local No. 9, for the period July 1, 1931 to July 1, 1932. (R. 10.) The appellant issued the said policy specifically to cover Mr. Lindsay's occupation and employment as business agent, and accepted the premiums on said policy from the Union. By complying with the regulations of the United States Employees' Compensation Commission, it thereby gave the deputy commissioner jurisdiction in this case.

The appellant having thereby recognized Mr. Lindsay's position of business agent as an *employment*, the Lathers' International Union, Local No. 9, as an *employer*, and Mr. Lindsay as an *employee*, should not now be heard to deny the status of the parties and the application of the District of Columbia Workmen's Compensation Act which they so clearly and definitely recognized in their contract of insurance. It has been held by reputable authority that where an insurance carrier contracts to



cover certain employees of an employer it can not thereafter repudiate its insurance contract and deny the very relationship which the contract was designed to cover, especially where the insurance carrier has accepted the premiums on the policy. See *Frankfort General Insurance Co. v. Conduitt*, 127 N. W. 212 (Ind.); *Maryland Casualty Co. v. Wells*, 134 S. E. 788 (Ga.); *Employers Liability Assurance Corp. v. Anderson*, 139 S. E. 688 (Ga.).

The appellees respectfully contend that the appellant is precluded by its own action from denying the relationship of employer and employee in this case and that such action amounts to an estoppel in law.

#### CONCLUSION

In conclusion the appellees respectfully submit that when the plaintiff below filed its bill of complaint, it sought a statutory review of a compensation order under the provisions of section 921 (b) of the Longshoremen's Act, cited in full above, under which the authority of the court extended only to a review of the questions of law involved. When the plaintiff below reached this court, it changed the theory of its case as originally set forth in its bill and now seeks to have this court ignore the findings of fact of the deputy commissioner, and to ignore the rule of law that this court may inquire only to ascertain whether there is any evidence to support the findings of fact of the deputy commissioner. As an afterthought it seeks on a new theory to have this court cast aside the findings



of fact of the deputy commissioner and to have the court make a new and independent reexamination of the evidence to redetermine independently the questions of fact involved.

Even assuming for the moment that the appellant had laid a proper foundation in its bill for such independent review of the facts, nevertheless the case upon which it relies, namely, *Crowell v. Benson, supra*, will not avail the appellant. That case clearly applies only to compensation cases arising under the Longshoremen's and Harbor Workers' Compensation Act where the cases involve the *admiralty and maritime jurisdiction of the United States* and where the jurisdiction of a *constitutional federal court* is affected and not where a *legislative court* is involved as in this case. While the local courts in the District of Columbia may be Federal courts for some purposes in interpreting laws of national concern, it is respectfully submitted that the courts of the District of Columbia are legislative courts with respect to their jurisdiction to review a compensation order issued by the deputy commissioner under the workmen's compensation act; hence they do not have analogous powers to those exercised by constitutional Federal courts where acting under constitutional grants of authority.

The evidence presented in this case, as shown by the transcript of record, shows an unmistakable relation of employer and employee between Opie



Lindsay and Lathers' International Union, Local No. 9. Section 1 of the Compensation Act in force in the District of Columbia broadly defines the term "employer" and "employee" sufficient to include the relationship in this case. If Mr. Lindsay was not an employee and the Lathers' Union not an employer, it is not clear how their respective status could be defined in terms of the English language. The Lathers' Union is a legal entity or person and clearly is an association within the definition of the term "person" as used in the local Compensation Act.

Mr. Lindsay was the *business agent*. He had to take orders from the Union and was under its control at all times. He certainly had some business to transact or would not have been so designated. He was not engaged in charitable or educational work, but devoted his time exclusively to a work vitally affecting the very existence of the organization which he represented. He had been engaged expressly as business agent for the Union for several years and was paid a weekly salary by the Union for this work which was his sole means of livelihood.

The interlocutory injunction was properly denied below since it was a matter resting entirely within the sound discretion of the court. The appellant has laid no foundation in its appeal for an attack upon the discretion so exercised.



The appellant as the insurance carrier for the Lathers' Union entered into a contract agreement with the latter, whereby it collected the premiums for the very risk which it is now seeking to repudiate. Under the doctrine of estoppel, therefore, it should not be permitted to escape its contractual obligation for which it received premiums. The appellant attempts to assert that a labor union as such is primarily a social organization and does not engage in any business. (Page 15, appellant's brief.) It cites the case of *Hudson v. Cincinnati, New Orleans, and Texas Pacific Railway Co.*, 152 Ky. 711, decided March 11, 1913, three years before the compensation law was passed in the State of Kentucky, and 15 years before the passage of the Compensation Act in the District of Columbia. This case is in no way pertinent to the issues herein involved and does not even relate to a compensation law.

Section 920 of the Longshoremen's Act provides that:

In any proceeding for the enforcement of a claim for compensation under this Act it shall be presumed, in the absence of substantial evidence to the contrary—(a) that the claim comes within the provisions of this Act.

Under the liberal construction to which this Act is entitled it is respectfully submitted that this Honorable Court should extend any reasonable

doubt in the interpretation of the law in favor of the injured employee for whose benefit Congress has passed this Act.

It is respectfully submitted that in view of the foregoing, the action of the Supreme Court of the District of Columbia in denying plaintiff's motion for an injunction, and in sustaining the defendant's motion to dismiss be affirmed and that the appeal herein be dismissed, with costs to appellees.

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